

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

C.A. No. CV-0401945(JBW)(SMG)

* * * * *

BARBARA SCHWAB, et al., Individually *

and on behalf of a class of all *

others similarly situated, *

Plaintiffs *

v. *

PHILIP MORRIS USA, INC., et al., *

Defendants *

* * * * *

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VIDEOTAPED DEPOSITION OF STEVEN P.

GASKIN, a witness called on behalf of the
Defendant R.J. Reynolds Tobacco Company,
pursuant to the Federal Rules of Civil
Procedure, before Jessica L. Williamson,
Registered Merit Reporter, Certified
Realtime Reporter and Notary Public in and
for the Commonwealth of Massachusetts, at
the Offices of Goodwin Procter, LLC, 53
State Street, Boston, Massachusetts, on
Tuesday, May 9, 2006, commencing at 9:38
a.m.

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<p>1 was not difficult.</p> <p>2 Q. What was the nature of your clientele there?</p> <p>3 A. Well, we were a start-up, so I'm not sure we</p> <p>4 had any paying clients.</p> <p>5 Q. At least in the beginning?</p> <p>6 A. Perhaps ever.</p> <p>7 Q. Okay. How long were you at AdPilot?</p> <p>8 A. For four years. Or at least -- I'm not</p> <p>9 sure, I'm sorry. It might have been three</p> <p>10 years.</p> <p>11 Q. Okay. Through sometime in 2003 or 2004?</p> <p>12 A. Something like that.</p> <p>13 Q. So in that period of time you don't recall</p> <p>14 if you had any paying clients at all?</p> <p>15 A. We had one paying client, but it turned out</p> <p>16 that we did not have the data we needed to</p> <p>17 deliver the project, so they ended up not</p> <p>18 paying.</p> <p>19 Q. Did you then join AMS?</p> <p>20 A. I consulted on my own again for a while.</p> <p>21 Q. And then what did you do after that?</p> <p>22 A. In September of 2004 I was invited to join</p> <p>23 AMS.</p> <p>24 Q. And what's your role at AMS?</p> <p>25 A. My title is senior consultant.</p>	<p>1 Q. And is there anyone to whom you report?</p> <p>2 A. As I said, I report to Bob Klein.</p> <p>3 Q. You report directly to him?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Are there people who report to you?</p> <p>6 A. Yes.</p> <p>7 Q. Who were they?</p> <p>8 A. Dan Bailiff is a programmer. He reports to</p> <p>9 me.</p> <p>10 Q. Now, you've been there, you say, since 2004?</p> <p>11 A. Yes.</p> <p>12 Q. What kinds of clients have you worked for,</p> <p>13 in what industries or businesses?</p> <p>14 A. Worked for high-tech companies, Internet</p> <p>15 search engine companies, window-making</p> <p>16 companies, medical device manufacturers.</p> <p>17 That's all I can recall at the moment, but,</p> <p>18 you know, a variety of industries.</p> <p>19 Q. Okay. You were engaged to help Dr. Hauser</p> <p>20 in this case a little over a year ago; is</p> <p>21 that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Prior to that had you ever done any work in</p> <p>24 the cigarette industry?</p> <p>25 A. No.</p>
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<p>1 Q. And what do you do in that capacity?</p> <p>2 A. I work on projects such as this, and I</p> <p>3 develop -- I'm in charge of developing new</p> <p>4 products and services for the company and --</p> <p>5 which is sort of a research and development</p> <p>6 role, and I help deliver other market</p> <p>7 research they conduct.</p> <p>8 Q. Okay. Now, do you do market research that's</p> <p>9 not involved in litigation unsupervised?</p> <p>10 MR. LANDAU: Objection to form.</p> <p>11 A. I'm trying to think here. I do run my own</p> <p>12 projects, so I guess the short answer is</p> <p>13 yes. I hesitated because occasionally I'll</p> <p>14 work with my boss, say, on the project.</p> <p>15 Q. Who is your boss?</p> <p>16 A. So it varies. Bob Klein, he's the president</p> <p>17 of AMS. Or I might be doing work for a</p> <p>18 project where I'm not in charge, I'm just</p> <p>19 doing some interviewing or something.</p> <p>20 Q. So you help out others on projects that</p> <p>21 they're responsible for, and you supervise</p> <p>22 your own project?</p> <p>23 A. Right.</p> <p>24 Q. Okay. How many are on the staff at AMS?</p> <p>25 A. I don't know exactly. Approximately 25.</p>	<p>1 Q. Had you ever done any work in any other</p> <p>2 industry where products are sold for</p> <p>3 personal consumption and enjoyment?</p> <p>4 A. Yes.</p> <p>5 Q. What industries are those?</p> <p>6 A. Consumer packaged goods industry.</p> <p>7 Q. Any -- what kind of packaged goods were</p> <p>8 they?</p> <p>9 A. Soft drinks, for example. Ocean Spray, a</p> <p>10 company here, makes a good number of drinks,</p> <p>11 as well as cranberry-based foods, did a lot</p> <p>12 of work for them. I can't remember offhand</p> <p>13 the others, but...</p> <p>14 Q. Have you ever purchased cigarettes?</p> <p>15 A. No.</p> <p>16 Q. So you've never gone up to a cash register</p> <p>17 and asked someone for a pack of something</p> <p>18 lights or a pack of something regulars or</p> <p>19 anything of that kind?</p> <p>20 MR. LANDAU: Objection to form.</p> <p>21 A. I've never bought cigarettes. I've looked</p> <p>22 at cigarette displays.</p> <p>23 Q. Yes, you've seen displays?</p> <p>24 A. Yeah.</p> <p>25 Q. Have you carefully reviewed displays or ads</p>

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<p>1 for any cigarette company at any time?</p> <p>2 MR. LANDAU: Objection to form.</p> <p>3 A. Do you mean paid by a cigarette company to</p> <p>4 do that?</p> <p>5 Q. No, whether you were paid or otherwise.</p> <p>6 A. I took a look at some cigarette displays for</p> <p>7 this case.</p> <p>8 Q. Prior to your engagement in this case you</p> <p>9 made no study of cigarette displays; is that</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And prior to your engagement in this case</p> <p>13 you made no study of cigarette advertising;</p> <p>14 is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And you've never made a study of cigarette</p> <p>17 regulation, have you?</p> <p>18 A. No.</p> <p>19 MR. LANDAU: Objection to form.</p> <p>20 A. You mean professionally?</p> <p>21 Q. Yes.</p> <p>22 A. No.</p> <p>23 Q. Have you ever made a study of the regulation</p> <p>24 of cigarettes -- cigarette use by states as</p> <p>25 it varies across the United States?</p>	<p>1 A. No.</p> <p>2 Q. Did you participate in the survey for the</p> <p>3 conjoint analysis that was reported on by</p> <p>4 Dr. Hauser?</p> <p>5 A. Yes.</p> <p>6 Q. Did you participate in the survey that was</p> <p>7 conducted in late November and early</p> <p>8 December of 2005 that is sometimes called</p> <p>9 the time survey?</p> <p>10 A. Yes.</p> <p>11 Q. Did you participate in any other surveys on</p> <p>12 the cigarette industry or on cigarettes</p> <p>13 working with Dr. Hauser?</p> <p>14 A. Yes.</p> <p>15 Q. What other surveys?</p> <p>16 A. There was a pilot conjoint analysis study</p> <p>17 conducted in March to April of last year for</p> <p>18 the Massachusetts case. It was very similar</p> <p>19 to the health risk conjoint, and that -- I</p> <p>20 participated in that. So that's why I</p> <p>21 answered no earlier.</p> <p>22 Q. I appreciate it.</p> <p>23 A. Yeah.</p> <p>24 Q. Apart from those three that you've just</p> <p>25 identified, have you ever reviewed or</p>
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<p>1 A. No.</p> <p>2 Q. Have you ever done a study of cigarette</p> <p>3 marketing?</p> <p>4 MR. LANDAU: Objection to form.</p> <p>5 A. What does that mean?</p> <p>6 Q. Have you ever done a study of the ways in</p> <p>7 which cigarette companies communicate with</p> <p>8 the public in addition to printed</p> <p>9 advertisements?</p> <p>10 A. No.</p> <p>11 Q. Have you ever done a study of polls or</p> <p>12 surveys regarding cigarettes other than the</p> <p>13 polls and surveys conducted by AMS?</p> <p>14 A. I don't understand the question.</p> <p>15 Q. You conducted -- you participated in two</p> <p>16 surveys at AMS --</p> <p>17 A. Oh, those surveys, I'm sorry.</p> <p>18 Q. Yes, yeah.</p> <p>19 A. If you want to reask the question.</p> <p>20 Q. Yeah, yeah, we'll clarify it --</p> <p>21 A. Okay.</p> <p>22 Q. -- just for a clean record.</p> <p>23 You participated in two surveys that</p> <p>24 were conducted by AMS regarding cigarettes,</p> <p>25 correct?</p>	<p>1 studied surveys or polls that were conducted</p> <p>2 of cigarette usage?</p> <p>3 A. No.</p> <p>4 Q. Okay. Have you ever studied or reviewed</p> <p>5 polls regarding people's beliefs of the</p> <p>6 health risks of smoking?</p> <p>7 A. No.</p> <p>8 Q. Have you ever studied polls regarding</p> <p>9 people's interest in stopping smoking?</p> <p>10 A. No.</p> <p>11 Q. Have you ever reviewed any polls regarding</p> <p>12 people's beliefs in the addictive nature of</p> <p>13 smoking?</p> <p>14 A. No.</p> <p>15 Q. Okay. Is it all right with you if for our</p> <p>16 purposes we refer to the first study that</p> <p>17 you worked on with Dr. Hauser resulting in</p> <p>18 the August 2005 opinion as the conjoint</p> <p>19 analysis survey?</p> <p>20 A. That's fine.</p> <p>21 Q. And if we refer to the second survey</p> <p>22 conducted at the end of 2005 as the time</p> <p>23 survey?</p> <p>24 A. That's all right.</p> <p>25 Q. Okay. Now, neither one involved a randomly</p>

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<p>1 work for an additional law firm that was</p> <p>2 dealing with a Massachusetts case on</p> <p>3 cigarettes. You'll recall the pilot study I</p> <p>4 mentioned.</p> <p>5 Q. Uh-huh.</p> <p>6 A. It could be their firm or perhaps both firms</p> <p>7 were paying, so it represented both.</p> <p>8 Q. But, in fact, you did talk to counsel for</p> <p>9 the plaintiffs from time to time in this</p> <p>10 case?</p> <p>11 A. Yeah. Yes.</p> <p>12 Q. Okay. Looking at the next page, Hauser 026,</p> <p>13 you forwarded to John Hauser Paul</p> <p>14 Gallagher's contact information; is that</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Have you spoken with Mr. Gallagher in the</p> <p>18 past?</p> <p>19 A. Oh, yes, yes.</p> <p>20 Q. How many times?</p> <p>21 A. A good number of times.</p> <p>22 Q. More than five?</p> <p>23 A. Yes.</p> <p>24 Q. More than 10?</p> <p>25 A. Yes.</p>	<p>1 thought they had merit.</p> <p>2 Q. So in the conjoint study you provided</p> <p>3 plaintiffs' counsel with copies of the</p> <p>4 questionnaire before it was used with the</p> <p>5 final sample?</p> <p>6 A. It's not entirely correct.</p> <p>7 Q. Tell me what about that question is not</p> <p>8 correct.</p> <p>9 A. We did not provide them with a copy.</p> <p>10 Q. What did you provide them with?</p> <p>11 A. We provided them with a URL where they could</p> <p>12 take the survey.</p> <p>13 Q. And they had the opportunity to review the</p> <p>14 survey before it was administered to the</p> <p>15 sample?</p> <p>16 A. Yes.</p> <p>17 Q. And they had the opportunity to comment on</p> <p>18 the survey before it was administered to the</p> <p>19 sample?</p> <p>20 A. Yes.</p> <p>21 Q. And they, in fact, made comments on the</p> <p>22 survey before it was administered to the</p> <p>23 sample?</p> <p>24 A. I can't recall any specific one, but they</p> <p>25 may well have.</p>
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<p>1 Q. More than 15?</p> <p>2 A. Yes.</p> <p>3 Q. More than 20?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay.</p> <p>6 A. We're pushing it there.</p> <p>7 Q. Okay. And how long has been the longest of</p> <p>8 your conversations with him?</p> <p>9 A. I don't know.</p> <p>10 Q. More than a half an hour?</p> <p>11 A. Possibly.</p> <p>12 Q. What subjects have you discussed with him?</p> <p>13 A. Generally the research we're doing.</p> <p>14 Q. You've given him updates on the research?</p> <p>15 A. Yes.</p> <p>16 Q. Has he made suggestions for things to</p> <p>17 consider in the research?</p> <p>18 A. Yes.</p> <p>19 Q. What kind of suggestions?</p> <p>20 MR. LANDAU: Objection to form.</p> <p>21 A. For example, when John was happy with the</p> <p>22 latest draft of a questionnaire, for</p> <p>23 example, we would let counsel look at it and</p> <p>24 see if they had any typos or even any other</p> <p>25 suggestions. We would consider them if we</p>	<p>1 Q. Were there comments recorded anyplace?</p> <p>2 A. I don't recall. I've provided all the notes</p> <p>3 that I've got with -- so...</p> <p>4 Q. Apart from Mr. Gallagher, who among</p> <p>5 plaintiffs' counsel have you met or spoken</p> <p>6 with?</p> <p>7 A. Well, I've met these gentlemen (indicating),</p> <p>8 and I don't -- I don't know if I've met</p> <p>9 anyone else. I may have spoken to people on</p> <p>10 the phone.</p> <p>11 Q. Have you met these gentlemen before today?</p> <p>12 A. I've met with Brent before.</p> <p>13 Q. How many times have you met with Mr. Landau?</p> <p>14 A. Once that I recall.</p> <p>15 Q. When was that?</p> <p>16 A. A few months ago to deal with discovery.</p> <p>17 Q. Discovery of -- paper discovery?</p> <p>18 A. Discovery of materials for this case.</p> <p>19 Q. Now, were plaintiffs' counsel provided with</p> <p>20 an opportunity to review the survey</p> <p>21 instrument for the time survey as well</p> <p>22 before it was administered to the sample?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall whether they had comments</p> <p>25 on the time survey before it was</p>

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<p>1 administered to the sample?</p> <p>2 A. Yes.</p> <p>3 Q. And what were their comments?</p> <p>4 A. The one that I remember was that they added</p> <p>5 a line of questioning that was not</p> <p>6 originally in the survey.</p> <p>7 Q. What was the line of questioning?</p> <p>8 A. It dealt with whether or not or when people</p> <p>9 had learned that the cigarette companies had</p> <p>10 misled them -- I don't remember the exact</p> <p>11 wording -- about the health risks of light</p> <p>12 cigarettes.</p> <p>13 Q. Was that question or line of questions added</p> <p>14 to the survey as it was administered to the</p> <p>15 sample?</p> <p>16 A. No.</p> <p>17 Q. So the suggestion --</p> <p>18 MR. ALLINDER: Sorry, I didn't</p> <p>19 understand the answer.</p> <p>20 MR. GROSSMAN: No.</p> <p>21 THE WITNESS: It was no.</p> <p>22 MR. ALLINDER: Thank you.</p> <p>23 BY MR. GROSSMAN:</p> <p>24 Q. So the survey was administered -- the time</p> <p>25 survey was administered without the line of</p>	<p>1 Q. Okay. So in the time survey you had</p> <p>2 qualitative interviews, then a pretest, then</p> <p>3 after comments from plaintiffs' counsel and</p> <p>4 amendments to the survey instrument another</p> <p>5 set of pretests?</p> <p>6 A. No.</p> <p>7 Q. What am I missing?</p> <p>8 A. We did not do an initial qualitative stage</p> <p>9 for the survey, but we did have two rounds</p> <p>10 of pretests.</p> <p>11 Q. Why didn't you do an initial qualitative</p> <p>12 stage?</p> <p>13 A. We felt it wasn't necessary.</p> <p>14 Q. And why is that?</p> <p>15 MR. LANDAU: Objection to form.</p> <p>16 A. The qualitative stage is mainly an attempt</p> <p>17 to get terminology, initial terminology, and</p> <p>18 we were able to get -- confirm that in your</p> <p>19 first pretest, at least for the questions we</p> <p>20 were asking at that time.</p> <p>21 Q. Now, did you communicate with counsel on the</p> <p>22 conjoint survey upon receipt of the results,</p> <p>23 learning the results?</p> <p>24 A. How immediately do you mean?</p> <p>25 Q. How long did it take after you got the</p>
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<p>1 questions that had been proposed by</p> <p>2 plaintiffs' counsel?</p> <p>3 A. No.</p> <p>4 Q. The survey was administered with the line of</p> <p>5 questions that were proposed by plaintiffs'</p> <p>6 counsel?</p> <p>7 A. Not precisely.</p> <p>8 Q. What happened?</p> <p>9 A. Well, we took them and made sure they were</p> <p>10 worded reasonably and such and applied</p> <p>11 scales to them, made them into proper market</p> <p>12 research questions.</p> <p>13 Q. You edited them?</p> <p>14 A. John and I edited them.</p> <p>15 Q. Together you and John edited them?</p> <p>16 A. Yes.</p> <p>17 Q. And as edited were those questions</p> <p>18 pretested?</p> <p>19 A. Yes.</p> <p>20 Q. So the proposed changes from plaintiffs'</p> <p>21 counsel were made -- were offered before the</p> <p>22 pretests of the time survey?</p> <p>23 A. They were made after our initial pretests</p> <p>24 but before -- then we pretested again when</p> <p>25 we had these questions.</p>	<p>1 results before you communicated --</p> <p>2 A. I don't know. You know, in a timely manner.</p> <p>3 Q. Now, in the time survey did you have more</p> <p>4 than one conversation with plaintiffs'</p> <p>5 counsel about the time survey?</p> <p>6 A. Yes.</p> <p>7 Q. Did you have more than five?</p> <p>8 A. I don't know.</p> <p>9 Q. But it could be?</p> <p>10 A. It could be.</p> <p>11 Q. Did you have conversations with plaintiffs'</p> <p>12 counsel on the time survey before it was</p> <p>13 administered to the panel, apart from the</p> <p>14 conversation that you discussed?</p> <p>15 MR. LANDAU: Objection to form.</p> <p>16 A. You mean, other early conversations?</p> <p>17 Q. Yes, other conversations prior to the</p> <p>18 administration of the questionnaire to the</p> <p>19 panel.</p> <p>20 A. Yes.</p> <p>21 Q. In those conversations did you discuss the</p> <p>22 cost of the survey.</p> <p>23 A. Yes.</p> <p>24 Q. And, in fact, for the time survey you</p> <p>25 increased the cost to -- by increasing the</p>

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<p>1 size of the panel that the test would be 2 administered to; is that correct? 3 MR. LANDAU: Objection to form. 4 A. Well, again, "panel" is not the term. 5 Q. Sample? 6 A. Yes. 7 Q. Where at first you considered a sample of 8 about 600 people, later the sample was 9 expanded to include over a thousand; is that 10 correct? 11 MR. LANDAU: Objection to form. 12 A. No. To the best of my knowledge, it was 13 always that sample size. 14 Q. Okay. Now, after the time survey was 15 conducted and completed by the sample, did 16 you communicate with plaintiffs' counsel as 17 to the results? 18 A. Yes. 19 Q. When did you first communicate with them as 20 to the results? 21 A. I can't remember exactly. 22 Q. Was it before the first draft of Dr. 23 Hauser's opinion on the time survey? 24 MR. LANDAU: Objection to form. 25 A. There were many drafts. Probably not before</p>	<p>1 Q. With an earlier draft. 2 Do you know which earlier draft you 3 provided him? 4 A. It's probably similar to the one, that long 5 report, December 16th, that I'm sure you're 6 familiar with. 7 Q. Yes, I am. And we'll take it out later. 8 A. Yes, I'm sure we will. 9 Q. But you did provide that or one like it to 10 Paul Gallagher? 11 MR. LANDAU: Objection to form. 12 A. Well, we provided him a draft at roughly 13 that time. 14 Q. Do you know if Ms. Schussheim also 15 communicated with plaintiffs' counsel in 16 this case? 17 A. Yes. 18 Q. Was she with you when you had your 19 communications with plaintiffs' counsel? 20 MR. LANDAU: Objection to form. 21 A. Generally not. 22 Q. Did she have, to your knowledge, independent 23 conversations with plaintiffs' counsel in 24 this case, independent of you? 25 A. Yes.</p>
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<p>1 the first. 2 Q. Did you communicate with them before the 3 last draft of Dr. Hauser's opinion relating 4 to the time survey? 5 A. Yes. 6 Q. How many times from the first draft until 7 the last draft of Dr. Hauser's opinion with 8 regard to the time survey did you 9 communicate with plaintiffs' counsel? 10 A. I don't remember precisely. I would say two 11 or three times. 12 Q. Did you provide plaintiffs' counsel with 13 drafts of Dr. Hauser's opinion regarding the 14 time survey? 15 A. Prior to when? 16 Q. Prior to the final opinion being filed? 17 A. We did provide one for one of the counsel's 18 review, yes. 19 Q. Which counsel was that? 20 A. Well, actually, it might have been for more 21 than one counsel, but we provided it to Paul 22 Gallagher. 23 Q. You provided Paul Gallagher with the final 24 draft? 25 A. No, an earlier draft.</p>	<p>1 Q. And was Dr. Hauser with you when you 2 communicated with plaintiffs' counsel in 3 this case? 4 MR. LANDAU: Objection to form. 5 A. Not always. 6 Q. Sometimes but sometimes not? 7 A. Right. 8 Q. And you communicated with plaintiffs' 9 counsel in this case from sometime in the 10 spring of 2005 through the present; is that 11 correct? 12 A. Correct. 13 Q. Let's turn to the conjoint survey for a 14 moment. There were qualitative interviews 15 for the conjoint survey? 16 A. Yes. 17 Q. Dr. Hauser did not conduct any of them; is 18 that correct? 19 A. That's correct. 20 Q. They were conducted only by you and Ms. 21 Schussheim; is that correct? 22 A. Yes. 23 MR. GROSSMAN: Why don't we take a 24 five-minute break, and we'll go on from 25 there.</p>

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<p>1 Q. You've seen these materials before?</p> <p>2 A. Well, I'm looking at the first page, so it's</p> <p>3 hard to generalize.</p> <p>4 Q. You are familiar with the first page?</p> <p>5 A. Yes, I am.</p> <p>6 Q. I would like to direct your attention, if I</p> <p>7 may, to the first and second page which have</p> <p>8 numbers 039 and 040 at the bottom.</p> <p>9 A. Right.</p> <p>10 Q. These are both outlines that were used for</p> <p>11 qualitative interviews in the conjoint</p> <p>12 analysis; is that correct?</p> <p>13 A. Not entirely.</p> <p>14 Q. How is it not correct?</p> <p>15 A. Just to remind you of the chronology, we did</p> <p>16 our exploratory interviews and first pretest</p> <p>17 prior to fielding the -- what we call the</p> <p>18 pilot conjoint test for the Massachusetts</p> <p>19 lawyers, which is very similar to what</p> <p>20 you're referring to as the conjoint</p> <p>21 analysis. So this was exploratory research</p> <p>22 for that pilot conjoint.</p> <p>23 Q. This would --</p> <p>24 A. It was also used for the other study, but it</p> <p>25 was developed for the first study.</p>	<p>1 A. I wrote that.</p> <p>2 Q. Okay. It also says, "Your smoking history."</p> <p>3 Who wrote that?</p> <p>4 A. I wrote that.</p> <p>5 Q. Looking at the next page in the upper</p> <p>6 left-hand corner it says, "Tell me about the</p> <p>7 cig. you smoke."</p> <p>8 Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Who wrote that?</p> <p>11 A. Ms. Schussheim wrote that.</p> <p>12 Q. Is the other writing on that page Ms.</p> <p>13 Schussheim's also -- Schussheim's also?</p> <p>14 A. To the best of my knowledge.</p> <p>15 Q. And at the bottom where it says, "Image</p> <p>16 (Lite vs. Regular)" above the line, and then</p> <p>17 "Pack," "Test," "Safety," "Price" and then a</p> <p>18 line and "Brand" under that, is that Ms.</p> <p>19 Schussheim's writing?</p> <p>20 A. That's my understanding, yes.</p> <p>21 Q. Okay. Now, looking at 039 which contains</p> <p>22 your writing --</p> <p>23 A. Yes. All right.</p> <p>24 Q. -- it's your recollection that you wrote</p> <p>25 this originally for the pilot study for the</p>
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<p>1 Q. And then it was used for the qualitative</p> <p>2 interviews in this conjoint study?</p> <p>3 A. Yes.</p> <p>4 Q. Who drafted the document that -- on the</p> <p>5 first page, which is 039?</p> <p>6 A. I drafted it.</p> <p>7 Q. And who drafted the second page, which is</p> <p>8 040?</p> <p>9 A. Well, they're both the same page in terms of</p> <p>10 word processing. Are you referring to that</p> <p>11 or to the writing on it?</p> <p>12 Q. Well, they are not identical.</p> <p>13 A. Oh, really?</p> <p>14 Q. Yeah.</p> <p>15 A. Okay. Oh. Well --</p> <p>16 Q. Is one a later draft?</p> <p>17 A. Probably. Oh, wait, I'm speculating. I</p> <p>18 would say yes, one is later.</p> <p>19 Q. And do you know which one is later?</p> <p>20 A. No, I don't.</p> <p>21 Q. Okay. Looking on 039, there it -- in the</p> <p>22 upper left-hand corner it says "Introduce</p> <p>23 me" and "AMS." Do you see that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Who wrote that?</p>	<p>1 Massachusetts project?</p> <p>2 A. Yes.</p> <p>3 Q. How many respondents were there in the</p> <p>4 Massachusetts pilot study?</p> <p>5 A. The actual conjoint analysis?</p> <p>6 Q. Yes.</p> <p>7 A. 199, I believe.</p> <p>8 Q. Now, what review of literature did you do,</p> <p>9 if any, in constructing this outline of</p> <p>10 light cigarette questions?</p> <p>11 A. I believe we've gone over that.</p> <p>12 Q. Yeah. The answer is none; is that correct?</p> <p>13 MR. LANDAU: Objection to form.</p> <p>14 A. Again, which literature do you mean?</p> <p>15 Q. Any public literature.</p> <p>16 A. Essentially, yes.</p> <p>17 Q. Essentially none, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Did you ever review the websites of R.J.</p> <p>20 Reynolds, Brown & Williamson, Philip Morris</p> <p>21 or Lorillard?</p> <p>22 A. Yes.</p> <p>23 Q. When did you do that?</p> <p>24 A. Prior -- I think prior to this research.</p> <p>25 Q. What were you looking for?</p>

18 (Pages 66 to 69)

Page 70	Page 72
<p>1 A. Looking for what they had to say about light 2 cigarettes. 3 Q. As to the health effects of light 4 cigarettes? 5 A. Yes. More generally, but yes. 6 Q. Did you look for anything else on the 7 websites of these companies? 8 A. I can't recall specifically what I looked 9 for. 10 Q. Now, at what point in the process for the 11 conjoint analysis did you develop a 12 tentative list of attributes to be studied 13 in the conjoint analysis? 14 MR. LANDAU: Objection to form. 15 A. I'm not sure. 16 Q. Just for clarification, four attributes were 17 studied in the conjoint analysis; is that 18 correct? 19 A. Yes. 20 Q. And those were pack versus -- hard pack box 21 versus soft pack, price, taste and risk; is 22 that correct? 23 A. Basically. 24 Q. Do you recall whether you tentatively set 25 those attributes as the attributes that</p>	<p>1 A. I think there were some, but I can't recall 2 exactly. 3 Q. Can you recall any of them? 4 A. I think that would be speculation. 5 Q. Did you do any study or review any 6 literature on cross-elasticity of demand 7 among different cigarette brands and 8 types -- 9 MR. LANDAU: Objection to form. 10 Q. -- in constructing your hypothetical or the 11 final questionnaire? 12 MR. LANDAU: Objection to form. 13 A. No. 14 Q. Now, as a person who has conducted and 15 designed conjoint analyses -- let me go 16 back. 17 You have, in fact, designed conjoint 18 analyses; is that correct? 19 A. Yes. 20 Q. And you've also conducted them; is that 21 correct? 22 A. Yes. 23 Q. As one who has both conducted and designed 24 conjoint analyses, you would agree, wouldn't 25 you, that it's important to test for the</p>
Page 71	Page 73
<p>1 would be measured before conducting the 2 qualitative interviews for the conjoint 3 analysis? 4 A. What do you mean by "set"? 5 Q. Did you go into the qualitative interviews 6 with a hypothesis that those four attributes 7 would be the attributes measured? 8 A. I don't recall. 9 Q. You may have, but you don't recall? 10 A. We had a hypothesis. I don't recall exactly 11 what it was. It was something similar. 12 Q. What was -- as a matter of scientific 13 method, you entered the qualitative 14 interviews with a hypothesis; is that 15 correct? 16 A. Again, it was a long time ago, so I don't 17 really recall. 18 Q. Do you recall any aspects of the 19 hypothetical that you had as you entered 20 into the qualitative interviews? 21 A. I think that we had a list of possible 22 attributes. 23 Q. Do you recall whether there were any items 24 on the list other than price, taste, health 25 risk or pack type?</p>	<p>1 right attributes? 2 MR. LANDAU: Objection to form. 3 A. I would agree. 4 Q. If you don't test for the right attributes, 5 there is a possibility that the results will 6 be skewed by unmeasured attributes; is that 7 correct? 8 MR. LANDAU: Objection to form. 9 A. Possible. 10 Q. And that's called confounding; is that 11 correct? 12 A. That's one word for it. 13 Q. And if the results are skewed by unmeasured 14 attributes, no adjustment can be made after 15 the study to account for them; is that 16 correct? 17 MR. LANDAU: Objection to form. 18 A. I don't know that that's true. It's 19 difficult. 20 Q. If they're not measured, there is no way to 21 know the extent to which those unmeasured 22 attributes affect respondents' answers with 23 regard to the measured attributes; is that 24 correct? 25 MR. LANDAU: Objection to form.</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 78</p> <p>1 of light smokers as a whole; is that 2 correct? 3 A. That's correct. 4 Q. Now, the questioning that you did of the 5 people in the qualitative interviews was not 6 the primary basis upon which he generated 7 hypotheses; is that correct? 8 MR. LANDAU: Objection to form. 9 A. What do you mean by that question? I don't 10 understand. 11 Q. Based upon the qualitative interviews that 12 you conducted, did you expand or contract a 13 list of attributes to be measured in the 14 conjoint analysis? 15 A. I don't recall the exact process, but I do 16 recall that we decided not to have brand as 17 one of the attributes. We decided to deal 18 within a person's brand because of all the 19 cross-elasticity problems and such you 20 mentioned, among other things. 21 Q. Now, you decided to deal within a person's 22 brand after the qualitative interviews? 23 A. I don't remember exactly when. 24 Q. You mentioned cross-elasticity problems. Is 25 it your understanding -- you have not</p>	<p style="text-align: right;">Page 80</p> <p>1 "light"; is that correct? 2 MR. LANDAU: Objection to form. 3 A. I'm afraid I paused on "you do not know" and 4 was waiting for the structure. If you'll 5 just repeat it once more, I'll give it a 6 try. 7 Q. Okay. You finished the conjoint analysis? 8 A. Yes. 9 Q. And having completed that conjoint analysis, 10 you don't know what the second choice of any 11 particular smoker would be; is that correct? 12 MR. LANDAU: Objection to form. 13 A. Well, you haven't said second choice in the 14 event of what. 15 Q. If his cigarette were not available. 16 A. That's true. That's correct. 17 Q. So, for example, you don't know if a 18 Marlboro Light smoker in the absence of this 19 cigarette would choose a different Marlboro 20 product or a different lights product? 21 A. That's correct. 22 Q. And that's because your conjoint analysis 23 was not designed to answer that question; is 24 that correct? 25 MR. LANDAU: Objection to form.</p>
<p style="text-align: right;">Page 79</p> <p>1 studied cross-elasticity in the cigarette 2 industry, correct? 3 A. Correct. 4 Q. And you didn't know before the conjoint 5 analysis and you don't know after the 6 conjoint analysis what the cross-elasticity 7 demand is among brands in the cigarette 8 industry; is that correct? 9 A. That's correct. 10 Q. And the conjoint analysis could not tell you 11 whether in the absence of the word "light" 12 Marlboro Light smokers would choose the same 13 cigarette or a different Marlboro or a 14 different cigarette entirely marked "light"; 15 is that correct? 16 MR. LANDAU: Objection to form. 17 A. I think you double-negated yourself there. 18 Q. Okay. I'll rephrase the question. 19 A. Okay. 20 Q. Now that you have completed the conjoint 21 analysis -- 22 A. Yes. 23 Q. -- you do not know whether smokers of 24 Marlboro Light would have purchased the same 25 cigarettes had they not contained the word</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Perhaps. Ask it once more. 2 Q. Your conjoint analysis was not designed to 3 answer the question what a smoker's 4 cigarette choice would be; is that correct? 5 MR. LANDAU: Same objection. 6 Q. Isn't that correct? 7 A. It wasn't a double negative problem. I'm 8 sorry. Try again. 9 Q. Conjoint analysis was not designed to 10 determine what brand a smoker would choose 11 if his brand were not available? 12 A. That's correct. 13 Q. This conjoint analysis was not designed to 14 determine the historic reason why the smoker 15 chose the brand that he uses; is that 16 correct? 17 MR. LANDAU: Objection to form. 18 A. That's correct. 19 Q. The conjoint analysis was not designed to 20 determine the information that was available 21 to the smoker when he chose his light brand 22 of cigarettes; is that correct? 23 MR. LANDAU: Objection to form. 24 A. Correct. I just want to point out here that 25 I'm not the expert on this case, so these</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 may be questions that are really not my area 2 of expertise. 3 Q. I understand, but -- 4 A. Okay. 5 Q. -- to your understanding. 6 A. All right. If we go on that basis -- 7 Q. Yes. 8 A. -- for these. 9 Q. To your understanding. 10 A. To my understanding. Here, ask the question 11 again. I'm afraid I've forgotten. 12 Q. To your understanding, the conjoint analysis 13 was not designed to determine the reason why 14 smokers chose the light cigarettes that they 15 chose? 16 MR. LANDAU: Objection to form. 17 A. I'm not trying to be obstinate, but that's 18 not a complete question. 19 Q. Let me just continue on to the next area. 20 A. Okay. Sure. 21 Q. Now, you know from your earlier work -- you 22 know vaguely from your earlier work at 23 Management Decisions that -- 24 A. Management Decision Systems. 25 Q. -- Management Decision Systems that the</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. LANDAU: Objection to form. 2 A. If you will, please give that another try. 3 I'll try to listen to it harder. I think I 4 can answer that. You don't even have to 5 change it, just repeat it. 6 MR. GROSSMAN: Why don't you repeat 7 the question. 8 (Record read.) 9 MR. LANDAU: Same objection. 10 A. I don't understand that question, or I don't 11 believe it's asked correctly. 12 Q. Okay. Have you -- in the qualitative 13 interviews and pretests did you make any 14 attempt to determine whether the lights 15 market was homogeneous as to the reasons 16 smokers chose their particular brands? 17 A. Did you say in the qualitative or pretests? 18 Q. Both. In either of them. 19 MR. LANDAU: Objection to form. 20 A. No, because it would be impossible to make 21 an authoritative determination on such a 22 small sample size. 23 Q. Did you make any effort to determine whether 24 the market for light cigarettes was 25 homogeneous on the basis of the conjoint</p>
<p style="text-align: right;">Page 83</p> <p>1 cigarette market is highly fractionalized 2 and that there are many, many brands 3 available to consumers? 4 MR. LANDAU: Objection to form. 5 A. Yes. 6 Q. And the sample in the conjoint analysis was 7 630-odd people; is that correct? 8 A. It's close, yes. 9 Q. And you understand that many of the brands 10 involved in this case have market shares 11 well below 1 percent? 12 MR. LANDAU: Objection to form. 13 A. That's my understanding. 14 Q. The sample surveyed was not large enough to 15 draw meaningful results as to any of those 16 brands by themselves; is that correct? 17 MR. LANDAU: Objection to form. 18 A. No. 19 Q. Well, in constructing the questionnaire and 20 designing the survey -- 21 A. Uh-huh. 22 Q. -- did you make any allowance or attempt to 23 determine on a brand-by-brand basis how 24 respondents would answer the conjoint 25 analysis questions?</p>	<p style="text-align: right;">Page 85</p> <p>1 survey as it was administered to the sample 2 of just over 600 people? 3 MR. LANDAU: Objection to form. 4 A. You're getting better. Yes. 5 Q. You made such an effort? 6 A. We made a small effort in that we looked at 7 the partworths of -- average partworths for 8 groups where we broke out the groups by the 9 brand that they -- of light cigarette that 10 they used most often. 11 Q. When you said you made a partial effort -- 12 A. Well, I mean -- 13 Q. -- did you make an effort for each brand? 14 A. What you do is you know each brand each 15 person primarily smokes, and so that enables 16 you to divide them into groups based on that 17 brand, and then you can look at the average 18 partworths for the levels of the attributes 19 for each group. And that lets you determine 20 if they are statistically different. 21 Q. Was there a statistical difference between 22 smokers of Kool cigarettes, Kool Light 23 cigarettes and other brands? 24 MR. LANDAU: Objection to form. 25 A. A, I don't recall, and, B, as you've noted</p>

22 (Pages 82 to 85)

Page 114	Page 116
<p>1 smokers, which includes smokers of all 2 types. 3 Q. Okay. Let me rephrase -- 4 A. We don't have that. 5 Q. Let me rephrase the question. 6 If the market for light cigarettes 7 were homogeneous -- 8 A. Uh-huh. 9 Q. -- then the responses of Newport Light 10 smokers and Marlboro Light smokers in your 11 conjoint survey would be substantially 12 identical; is that correct? 13 MR. LANDAU: Objection to form. 14 A. If groups are homogeneous with the variables 15 of interest, they tend to answer about the 16 same, that's true, but -- 17 Q. But if Marlboro Light smokers have a 18 different view of the taste of Marlboro 19 Lights in relation to Marlboro regulars than 20 Newport Light smokers do with regard to the 21 taste of Newport Light versus Newport 22 regulars, there are differences not 23 accounted for in the homogenized answers to 24 the conjoint analysis? 25 MR. LANDAU: Objection --</p>	<p>1 correct? 2 A. Is that different from race? 3 Q. Yes, like Hispanic. 4 A. Okay. We didn't do that. 5 Q. And you set up no quota by education; is 6 that right? 7 A. I believe that's correct. 8 Q. Have you done any study at any time to 9 determine whether education is a substantial 10 driver in whether individuals smoke light 11 cigarettes or cigarettes at all? 12 MR. LANDAU: Objection to form. 13 A. No, I still must say you don't understand 14 how the sample was drawn in this study. 15 You're not telling me -- you don't seem to 16 have a clear picture of it. 17 Q. Did you ever make any attempt in analyzing 18 the numbers that came back from the conjoint 19 survey whether menthol smokers differed in 20 the way they responded to questions from 21 smokers of non-mentholated cigarettes? 22 A. Again, your question assumes there are 23 regular and light menthol smokers in the 24 sample, it seems, since you just -- 25 Q. No. No, no, no.</p>
Page 115	Page 117
<p>1 A. You speak of my -- 2 MR. LANDAU: Objection to form. 3 A. -- example as if it were milk, and that's 4 not correct. 5 Q. The sample was intended to be of light 6 smokers, correct? 7 A. Yes. What happened -- you haven't really 8 plumbed how we do that or did that, but the 9 completed surveys were of light cigarette 10 smokers. 11 Q. And the completed survey was intended to be 12 representative of the public by sex, by 13 region of the country and by income as 14 divided into three groups, correct? 15 MR. LANDAU: Objection to form. 16 A. That's not correct. 17 Q. You set up quotas? 18 A. That's correct. 19 Q. You set up no quota by brand; is that 20 correct? 21 A. That's correct. 22 Q. You set up no quota by race; is that 23 correct? 24 A. That's correct. 25 Q. You set up no quota by ethnicity; is that</p>	<p>1 A. -- say smokers. 2 Q. I'm sorry. The sample was only of light 3 smokers, correct? 4 A. That's correct. 5 Q. Okay. Did you ever make any effort to 6 determine whether the smokers of mentholated 7 light cigarettes responded to the questions 8 the same as the smokers of non-mentholated 9 light cigarettes? 10 MR. LANDAU: Objection to form. 11 A. I object to the form also, but I'll tell you 12 why. We didn't look at mentholated versus 13 non-mentholated -- 14 Q. Okay. 15 A. -- just to move things along. 16 Q. Now, when you conducted the qualitative 17 interviews, most smokers who you interviewed 18 told you they preferred the taste of light 19 cigarettes; isn't that right? 20 MR. LANDAU: Objection to form. 21 A. I would say that's true. 22 Q. In fact, if they told you that all things 23 were equal, if they viewed both cigarettes 24 as equally risky, they would have smoked 25 lights anyway?</p>

30 (Pages 114 to 117)

Page 118	Page 120
<p>1 MR. LANDAU: Objection to form. 2 A. I think that's stating it too strongly, for 3 two reasons: One is you're making a very 4 general statement compared to the exact 5 conclusions one could draw from an 6 experiment; B, I'm not the expert; but C -- 7 now I can't remember C, but there was 8 something else. 9 Q. Well, why don't we take out -- 10 A. Oh, C -- I'm sorry. C was I don't quite 11 remember what the partworth values were, 12 which you're probably about to show me. 13 Q. No, I'm talking about the qualitative 14 interviews. 15 A. Oh, the qualitative interviews? 16 Q. Yes. 17 A. Oh, I'm sorry, I misunderstood. 18 Q. Yeah. And you conducted the qualitative 19 interviews, so you were the one who spoke 20 with the people? 21 A. Well, actually, that's not entirely correct 22 since Ms. Schussheim conducted some of the 23 qualitative interviews. 24 Q. Yeah, you conducted seven? 25 A. Right.</p>	<p>1 Q. On Page 050 you'll see in the lower 2 left-hand corner -- 3 A. Yeah. 4 Q. -- which is the interview of someone named 5 Heinz. At the top of 050 -- 6 A. Uh-huh. 7 Q. -- you wrote, "So ceteris paribus, he'd 8 smoke lites instead of regulars due to 9 taste. Nicotine is the same." 10 A. Yes, I wrote that. 11 Q. Do you recall whether those words are your 12 impression of what he said or a quote of 13 what he said? 14 A. Well, given the pretentious Latin usage, 15 it's likely my paraphrase of what he said. 16 Q. But, in fact, it was your understanding that 17 if lights and regulars were equally risky, 18 he would smoke lights anyway because he 19 preferred the taste? 20 A. Yes. I would like to point out once more 21 that this is not a counting exercise on the 22 qualitatives. 23 Q. Yes, I understand that. 24 A. Okay. 25 Q. Could you look at -- two pages later at</p>
Page 119	Page 121
<p>1 Q. And in those qualitative interviews the 2 people interviewed told you to a large 3 extent that all things being equal regarding 4 health, they still would have smoked lights 5 because they preferred the taste? 6 MR. LANDAU: Objection to form. 7 A. I think there was a general -- these were 8 light smokers -- 9 Q. Yes. 10 A. -- and they -- I think they generally 11 preferred the taste of light cigarettes. 12 Q. In fact, one told you in Latin "ceteris 13 paribus"? 14 A. That was probably me at work. 15 Q. Okay. But you said, "Ceteris paribus, he 16 would smoke lite cigarettes"? 17 MR. LANDAU: Objection to form. 18 A. Can we look at the exact -- 19 Q. Yes. 20 A. -- quote? 21 Q. Yes. 22 A. I'm not disputing it. 23 Q. Yes, could you look at Exhibit No. 2, 24 please. 25 A. Exhibit No. 2, okay, yeah.</p>	<p>1 Hauser 052. 2 A. Uh-huh. 3 Q. Jennifer who you interviewed similarly said 4 at the very bottom of the page, "if lites 5 are as unhealthy as regulars, she wants the 6 lite - taste, feel are better 'lighter.'" 7 A. Yes, I wrote that. 8 Q. Okay. If you look at Page 045, "Bottom 9 line" -- literally and figuratively the 10 bottom line in discussing Chris you wrote, 11 "Bottom line: regular cigarettes are 12 harsh"? 13 A. Yes, I did. 14 Q. He didn't like the taste of regular 15 cigarettes, correct? 16 A. Well, he said they're harsh. 17 Q. Yes, okay. 18 MR. GROSSMAN: Let's see. It's a 19 quarter after 12:00. Why don't we turn off 20 the tape. 21 THE VIDEOGRAPHER: The time is 22 12:13. This is the end of Cassette No. 2. 23 We're off the record. 24 (Lunch recess taken.) 25</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 126</p> <p>1 traditional conjoint/choice models." 2 When did you write that? 3 A. Sometime last year, I think. 4 Q. Before or after the conjoint study in this 5 case? 6 A. I don't remember. 7 Q. In the next paragraph it says, "Consumers 8 generally develop their consideration set by 9 reviewing a list of features and finding all 10 the products with their 'must have' features 11 and without features that are grounds for 12 elimination, such as, an unacceptable brand 13 or an unaffordable price. This is a 14 non-compensatory process, because no amount 15 of good performance on other features can 16 make up for the lack of a 'must have' 17 feature." 18 Do you know if any appreciable number 19 of consumers of light cigarettes view some 20 brands as unacceptable? 21 MR. LANDAU: Objection to form. 22 A. Our study did not deal with brands, so I do 23 not. 24 Q. Okay. The next sentence here is 25 "Traditional choice and conjoint models, on</p>	<p style="text-align: right;">Page 128</p> <p>1 Do you see that? 2 A. Yes, I do. 3 Q. Was the full set of attributes and levels 4 used in the conjoint analysis on cigarettes 5 that you conducted? 6 MR. LANDAU: Objection to form. 7 A. Are you asking me this as an expert in the 8 case or -- 9 Q. No. Is it your understanding that you chose 10 to work with a full set of attributes and 11 levels in this case? 12 MR. LANDAU: Objection to form. 13 A. Well, we did not follow this particular 14 process. We did work with -- we did not 15 whittle down the set of attributes for each 16 respondent as this describes. 17 Q. Okay. So in this case you used the 18 traditional conjoint analysis rather than 19 the new model that you referred to in this; 20 is that correct? 21 A. Essentially, yes. 22 MR. GROSSMAN: Let me mark what we 23 will as Exhibit No. 7, and that's an 24 opinion. 25</p>
<p style="text-align: right;">Page 127</p> <p>1 the other hand, assume a compensatory 2 process, in which a product can be chosen 3 even if it does poorly on some features, as 4 long as it does well on others. This 5 generally works for trade-offs within the 6 consideration set, but not for the formation 7 of the consideration set itself." 8 Do you agree with that? 9 A. Depends on the category, but it's often the 10 case. 11 Q. Now, it continues. "With our process, 12 respondents are presented with an array of 13 product alternatives generated from the full 14 set of attributes for the product category. 15 Respondents select the alternatives they 16 would seriously consider buying. A quick 17 mathematical test is done to check whether 18 each respondent used a non-compensatory or 19 compensatory method for deriving his or her 20 consideration set. In initial testing, it 21 appears that only a small minority will use 22 a compensatory method, and for those 23 respondents, we perform a choice-based 24 conjoint analysis using the full set of 25 attributes and levels."</p>	<p style="text-align: right;">Page 129</p> <p>1 (Exhibit No. 7, Expert Witness 2 Report of Dr. John R. Hauser, marked for 3 identification.) 4 Q. Mr. Gaskin, I'm handing you what's been 5 marked for identification purposes as Gaskin 6 Exhibit No. 7, which is a copy of Dr. 7 Hauser's opinion of August 22, 2005 on the 8 conjoint analysis. Did you participate in 9 any way in drafting this report? 10 A. Yes, under Dr. Hauser's direction. 11 Q. Who wrote the first draft? 12 MR. LANDAU: Objection to form. 13 A. Well, again, it's not an all or nothing 14 thing, but I would attempt to write a draft 15 under John's direction. 16 Q. And then he edits it? 17 A. He'll add content, edit it, delete. It's up 18 to him. 19 Q. And in this particular case of the conjoint 20 analysis report, you made the first effort 21 to commit this to paper? 22 A. Actually, it's a little more complicated 23 than that. 24 Q. Okay. What was the process? 25 A. We had done a similar analysis for another</p>

33 (Pages 126 to 129)

Page 150	Page 152
<p>1 affecting their taste or change the taste of 2 cigarettes without affecting their risk? 3 MR. LANDAU: Objection to form. 4 A. I don't recall. I do recall they said they 5 could do our study reasonably. 6 Q. You recall that they said they could suspend 7 their disbelief if they, in fact, 8 disbelieved that hypothetical? 9 A. We asked -- 10 MR. LANDAU: Objection to form. 11 A. We asked -- well, I don't remember the exact 12 quote, but we did ask them to, for the 13 purposes of the study, to assume that it 14 could happen. 15 Q. And in your qualitative interviews in which 16 you asked wide-ranging questions about risk, 17 as well as in the pretesting interviews, no 18 one, to your recollection, said that he had 19 believed prior to the survey that 20 manufacturers could change the risks of 21 cigarettes without affecting taste; is that 22 correct? 23 MR. LANDAU: Objection to form. 24 A. I don't recall anyone saying that. 25 Q. Okay. What was Dr. Hauser's role, if any,</p>	<p>1 (Mr. Allinder entered deposition 2 room.) 3 Q. Did anyone else work with you on the time 4 survey? 5 A. Some of -- a number of pretests were 6 conducted -- a few of the pretests were 7 conducted by a woman at AMS. 8 Q. What's her name? 9 A. Derby Swanson. 10 Q. Did you work on the pretest as well? 11 A. Yes. 12 Q. Did Dr. Hauser participate in any of the 13 interviews, pretests on the time survey? 14 (Mr. Falcone entered deposition room.) 15 A. No, he did not. 16 Q. Now, in the conjoint survey did Dr. Hauser 17 give you the go-ahead to begin pretesting of 18 the questionnaire? 19 A. Yes. 20 Q. In order to give you the go-ahead on the 21 pretesting of the questionnaire, what is 22 your understanding of what Dr. Hauser had to 23 be satisfied of? 24 MR. LANDAU: Objection to form. 25 Q. Let me rephrase the question.</p>
Page 151	Page 153
<p>1 in drafting the language that was used in 2 the questionnaire for the conjoint survey? 3 A. Well, as I said, I wrote it at his 4 direction, so he had a substantial amount of 5 involvement in terms of feedback, quality 6 control, final say. 7 Q. Did he personally write any part of it? 8 A. I don't recall. 9 MR. LANDAU: Objection to form. 10 Q. Did he personally write any part of the time 11 survey? 12 MR. LANDAU: Objection to form. 13 A. I don't recall. 14 Q. Did you write under his guidance or 15 otherwise the first draft of the time 16 survey? 17 A. I worked on it with him. I don't recall 18 that I wrote it like Athena or Venus rising 19 out of the sea for him. 20 Q. Athena rising out of Zeus's head? 21 A. Correct. Thank you. 22 Q. Did Ms. Schussheim work with you on the time 23 survey as well? 24 A. No, she did not. 25</p>	<p>1 A. Okay. 2 Q. How far along in the process do you have to 3 be before you can begin pretesting? 4 MR. LANDAU: Objection to form. 5 A. Generally reasonably far. 6 Q. In order to begin pretesting, you have to 7 have developed the basic format and wording 8 of the questionnaire; is that correct? 9 A. Yes. 10 Q. Because pretesting is a means of fine-tuning 11 the language of the questionnaire; is that 12 correct? 13 MR. LANDAU: Objection to form. 14 A. Basically. Sometimes you might find you're 15 missing a question, but generally you're 16 tuning the language. 17 Q. And so in approving pretests for the 18 conjoint questionnaire, Dr. Hauser was, to 19 your understanding, agreeing that the study 20 design was appropriate to the circumstance? 21 MR. LANDAU: Objection to form. 22 A. What do you mean by "the study design"? 23 Q. Well, at the time that pretesting began on 24 the conjoint study -- 25 A. Right.</p>

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<p>1 Q. In your qualitative research were 14 2 interviews, correct? 3 A. Yes. 4 Q. And there are 41 brands in this case, 5 correct? 6 MR. LANDAU: Objection. 7 A. That's correct. 8 Q. And so -- 9 A. Well, at least -- we had 41 brand 10 differentiations of some sort, yes. 11 Q. Yeah, 41 -- you did not interview even one 12 person for most of the brands that are 13 involved in this case; is that correct? 14 A. That's correct. 15 Q. And, in fact, you had multiple respondents 16 who smoked Marlboro Lights and Parliament 17 Lights in your interviews; is that correct? 18 A. I believe so. 19 Q. Did you ever question why there were so many 20 Parliament Light smokers among the people 21 who you interviewed, considering the 22 minuscule share of the national market that 23 Parliament Light has? 24 MR. LANDAU: Objection to form. 25 A. I don't recall.</p>	<p>1 A. Okay. In the notes I had copied -- you 2 know, maybe I'm wrong. In the notes I had 3 copied I believe I saw the other day a copy 4 of either a printout of it, of the screens 5 or a Word version of it that I thought was 6 an earlier draft. 7 Q. Okay. 8 A. There were also notes on the pretest that 9 had comments on the questions and such. 10 Q. Yes. We have the notes on the pretest -- 11 A. Yeah. 12 Q. -- but I don't know of anything else. 13 A. Okay. 14 Q. Again, in the pretest Dr. Hauser did not 15 participate in any interviews on the 16 pretest; is that correct? 17 A. That's correct. 18 Q. Now, perhaps you could clarify it for me 19 quickly. If you look at Exhibit No. 2 -- 20 oh, I think this might be separate. They 21 might be included in that. 22 Following the pretests there were 23 additional qualitative interviews conducted; 24 is that correct? 25 A. Huh?</p>
Page 163	Page 165
<p>1 Q. So the decision to lump smokers of all 41 2 brands together for purposes of the conjoint 3 survey was an a priori decision; is that 4 correct? 5 MR. LANDAU: Objection. 6 A. Could you define the term "lump"? 7 Q. The decision to conduct the single survey 8 that would be attributed to all 41 brands 9 regardless of the number of smokers per 10 brand included in the survey was an a priori 11 decision; is that correct? 12 MR. LANDAU: Objection to form. 13 A. That's correct, for good reason, so... 14 Q. But it was an a priori decision? 15 A. Yes. 16 Q. Did you maintain any drafts of the 17 questionnaire that was used in the pre -- 18 the questionnaire or questionnaires that 19 were used in the pretests before the 20 conjoint analysis survey? 21 A. Yes. 22 Q. Where are they? 23 A. I produced them. 24 Q. To my knowledge, we have only the final 25 draft.</p>	<p>1 Q. Well, the pretests were conducted on March 2 23rd, 2005, approximately? 3 A. That's correct. 4 Q. Did they continue into later days? 5 A. I seem to remember March 29th, but which 6 later ones are you referring to? 7 Q. I've got March 23, March 29, March 25. 8 A. Okay. 9 Q. I believe that there were interviews 10 conducted in May, on May 18th. 11 A. That's correct. 12 Q. What were those interviews? 13 A. These were interviews for a survey that was 14 not conducted. 15 Q. What was the survey that was not conducted? 16 A. The Massachusetts lawyers, if I may term 17 them as such -- 18 Q. Yes. 19 A. -- without fear of reprisal asked if we 20 could do a version of the pilot conjoint we 21 had done that talked about health risk that 22 instead referred to tar and nicotine levels 23 instead of health risk. 24 Q. I see. 25 A. So we did some pretest with that wording</p>

42 (Pages 162 to 165)

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<p>1 changed, and then for whatever reason they</p> <p>2 did not do a survey.</p> <p>3 Q. Okay. I would like to direct your</p> <p>4 attention, if I may, to the pretest</p> <p>5 interviews. Let's see, 065...</p> <p>6 A. That's Exhibit 2?</p> <p>7 Q. Well, I think --</p> <p>8 A. Oh, that's another one.</p> <p>9 (Discussion off the record.)</p> <p>10 Q. Well, could I see your Exhibit 2, please?</p> <p>11 A. Sure. (Hands document to Mr. Grossman.)</p> <p>12 Q. 062, it will be in here, okay. Mine has</p> <p>13 been separated.</p> <p>14 Looking at Exhibit 2, Page 062 --</p> <p>15 A. Right.</p> <p>16 Q. -- I'm sorry, 065 --</p> <p>17 A. Ah.</p> <p>18 Q. -- there's an interview from the pretest of</p> <p>19 March 25, 2005 of Stacey. Do you see at the</p> <p>20 bottom it says, "She got a bit scared by</p> <p>21 health risk is greater than regular</p> <p>22 cigarettes. 20 percent and 50 percent -</p> <p>23 that sounds fine. A buck is serious money.</p> <p>24 50 percent is crazy - as long as the health</p> <p>25 risk is greater, even though she knows it's</p>	<p>1 A. (No verbal response.)</p> <p>2 Q. Okay. Um, could you --</p> <p>3 THE WITNESS: While you're saying</p> <p>4 um, I'm an old person, so I need another</p> <p>5 break.</p> <p>6 MR. GROSSMAN: Okay.</p> <p>7 THE WITNESS: I'll be right back.</p> <p>8 MR. GROSSMAN: Let's stop the tape.</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 2:17. We're off the record.</p> <p>11 (Recess taken.)</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 2:20. We are back on the record.</p> <p>14 BY MR. GROSSMAN:</p> <p>15 Q. Okay. Mr. Gaskin --</p> <p>16 A. Thank you.</p> <p>17 Q. -- all set? Could you direct your</p> <p>18 attention, please, to -- in Exhibit No. 2 to</p> <p>19 the Page 073 in the lower right-hand corner.</p> <p>20 A. Right.</p> <p>21 Q. And those are your notes of Melissa No. 6?</p> <p>22 A. Right.</p> <p>23 (Mr. Garnick entered deposition room.)</p> <p>24 Q. You wrote, "Likes ultra lights best! But is</p> <p>25 a Parliament smoker, and they don't appear</p>
Page 167	Page 169
<p>1 the same."</p> <p>2 What is she saying there?</p> <p>3 A. I'm not --</p> <p>4 MR. LANDAU: Objection to form.</p> <p>5 A. -- sure.</p> <p>6 Q. There was no option on the survey for the</p> <p>7 conjoint analysis in the conjoint analysis</p> <p>8 section for respondents to write no</p> <p>9 preference; is that correct?</p> <p>10 A. You mean, with any set of choice --</p> <p>11 Q. Yes.</p> <p>12 A. -- alternatives?</p> <p>13 Q. Yes.</p> <p>14 A. That's correct.</p> <p>15 Q. Whose decision was it not to include a no</p> <p>16 preference option?</p> <p>17 MR. LANDAU: Objection to form.</p> <p>18 A. I think that "no preference" isn't quite the</p> <p>19 right term.</p> <p>20 Q. What's the right term?</p> <p>21 A. I think it's -- you choose none of those,</p> <p>22 and I -- again, I'm not speaking as an</p> <p>23 expert, but the decision would have been</p> <p>24 John's.</p> <p>25 Q. Not yours?</p>	<p>1 to have ultra lights. It wasn't bad."</p> <p>2 Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. For some smokers the importance of brand or</p> <p>5 brand image trumps all other factors; is</p> <p>6 that correct?</p> <p>7 MR. LANDAU: Objection to form.</p> <p>8 A. I'm not an expert, so --</p> <p>9 Q. In the case of Melissa who preferred the</p> <p>10 taste of ultra lights, purchasing Parliament</p> <p>11 was more important than purchasing the class</p> <p>12 of cigarettes that she preferred the taste</p> <p>13 of; is that correct?</p> <p>14 MR. LANDAU: Objection to form.</p> <p>15 A. I'm not sure why I said "they don't appear</p> <p>16 to have" -- well, I think that -- yeah, I'm</p> <p>17 not quite sure what she was saying, but it</p> <p>18 appears that she was saying that she's a</p> <p>19 Parliament smoker. I don't know if they</p> <p>20 have an ultra light or not, in fact.</p> <p>21 Q. But she reported to you that she smoked</p> <p>22 Parliament Lights; otherwise, she wouldn't</p> <p>23 be included in the pretest, correct?</p> <p>24 A. That's true.</p> <p>25 Q. And having reported that she smoked</p>

43 (Pages 166 to 169)

Page 170	Page 172
<p>1 Parliament Lights, she also reported that 2 she preferred the taste of ultra lights, but 3 at least that she found it difficult to find 4 Parliament Ultra Lights -- 5 MR. LANDAU: Objection to form. 6 Q. -- if they were available at all? 7 MR. LANDAU: Objection. 8 A. That's a bit of speculation on my part to 9 agree. It's conceivable, but, again, you 10 know... 11 Q. You found evidence in the interviews you 12 conducted that for some smokers brand was a 13 very important factor in cigarette choice? 14 MR. LANDAU: Objection to form. 15 A. We found there with Melissa that she liked 16 Parliament, for example. I would say it's 17 fair to say that brand is an important 18 factor in people's cigarette choice. 19 Q. For some people -- 20 A. Well, saying this based on my qualitative -- 21 Q. Yes. 22 A. -- interviews as opposed to being an expert. 23 Q. Yes. And saying this based on what was 24 reported to you -- 25 A. Okay.</p>	<p>1 "If he had to switch, he'd smoke 2 another 100 - would look around." 3 Do you see that? 4 A. Yes, I see that. 5 Q. For some smokers, as reported to you, the 6 length of the cigarette was important in 7 their choice? 8 MR. LANDAU: Objection to form. 9 A. For Bert here it appears he wants to smoke a 10 100, and that's the length of the cigarette. 11 Q. Did you consider whether to include length 12 of cigarette in the factors to be included 13 in the conjoint analysis? 14 A. I don't recall exactly, but I do know that 15 since we had them work within their brand, 16 they could hypothetically stay with a 17 certain size. 18 Q. Do you know if all brands are available in 19 100s in all styles, that is, ultra light, 20 light and full flavor? 21 A. No, I don't. 22 Q. By the way, did you test the word "regular" 23 to determine whether respondents understood 24 that to mean a filtered cigarette? 25 MR. LANDAU: Objection to form.</p>
Page 171	Page 173
<p>1 Q. -- in the interviews you conducted? 2 A. Yeah. 3 Q. And there was -- there are also people who 4 reported to you in the interviews that you 5 conducted that the length of the cigarette 6 was important in their choice? 7 MR. LANDAU: Objection to form. 8 A. I don't recall them saying that. If you can 9 show me. 10 Q. There was one person who reported that he 11 would only smoke 100 millimeter cigarettes, 12 smoked Parliament 100 lights. Let me just 13 see if I can find it quickly. I'll give it 14 one more run, and then we'll move on. 15 A. Okay. 16 Q. Oh, it's the first person -- 17 A. Oh. 18 Q. -- Bert, on Page 041. 19 A. Okay. 20 Q. Do you see the second paragraph, "Smoked 21 Parliaments - and the brand changed to be 22 all lights. He smoked the 100s. No taste 23 difference. No difference in smoking. He 24 didn't even notice at first. He was okay 25 with that.</p>	<p>1 A. We tested the word "regular" extensively in 2 our pretests. I can't recall if there was 3 confusion or agreement about whether it was 4 a filtered cigarette. 5 Q. Did you ask them whether they believed 6 regular to be a filtered or unfiltered 7 cigarette? 8 A. No. I asked them if they found the term 9 clear to them and usable. 10 Q. But you don't know whether when they said 11 they understood the term "regular," you 12 don't know what they meant by the term? 13 A. I don't know if they meant filtered or 14 unfiltered. 15 Q. Okay. How did you find out about the 16 request for the time survey? 17 A. From counsel by phone. 18 Q. Which counsel was it? 19 A. Paul Gallagher, I believe. I don't want to 20 speculate, but... 21 Q. That's what you recall? 22 A. Yes. 23 Q. Had he spoken with Dr. Hauser about that, to 24 your knowledge, when he spoke to you about 25 it?</p>

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<p>1 correspondence and notes relating to the 2 time survey. 3 A. Right. 4 Q. Let's quickly go through some of these. On 5 the page in the lower right-hand corner, 6 2287, 2287 -- 7 A. Yes. 22 -- 8 Q. It's two pages in. 9 A. Oh, on the right? 10 Q. Three pages in, yeah. 11 A. Oh, okay. 12 MR. GROSSMAN: Let's turn off the 13 tape, please. 14 THE VIDEOGRAPHER: The time is 15 2:54. We're off the record. 16 (Discussion off the record.) 17 THE VIDEOGRAPHER: The time is 18 2:55. We're back on the record. 19 BY MR. GROSSMAN: 20 Q. Do you see Page 2287? 21 A. Yes. 22 Q. In the upper left-hand corner -- this is an 23 e-mail from you to Sonia Arora and Varun 24 Vig; is that correct? 25 A. Yes. Or -- yes.</p>	<p>1 in -- 2 A. Yes. 3 Q. -- you were provided with costs for the 4 survey from Greenfield depending on whether 5 you had 600, 700, 800 or 900 participants? 6 A. Yes. 7 Q. And those costs were provided to you on 8 November 29, 2005? 9 A. Yes. 10 Q. In fact, you chose to have over a thousand 11 participants; is that correct? 12 A. Not really so much a choice, but that's how 13 many came out of the screening process. 14 Q. And the total cost for that was \$39,202? 15 A. Where do you see that? 16 Q. It's on 2320, which is also HAUSER 626. 17 A. So 39,202? 18 Q. Yes, that's correct. 19 A. The best of my recollection. 20 Q. And it also notes that there was \$20,302 due 21 to the additional completes, that is, that 22 there were more than a thousand completed 23 surveys as opposed to 600 that was in the 24 original estimate? 25 A. That's my understanding.</p>
Page 187	Page 189
<p>1 Q. And you're passing along an e-mail that came 2 to you? 3 A. Yes. Or -- well, it's sent to me, so I 4 didn't write it. 5 Q. Yes. 6 A. So someone's sending it to me. 7 Q. And the person who sent it to you was Puneet 8 Khurana from Greenfield Online? 9 A. Yes. 10 Q. Okay. And he wrote he understood you would 11 be running the project smokers with them, 12 and he wanted to verify some information; is 13 that correct? 14 A. That's correct. 15 Q. And, in fact, you were -- you did serve as 16 the point person on this? 17 A. To Puneet, yes. 18 Q. Could you -- and during the pretest each of 19 the participants was given a \$50 bill; is 20 that correct? 21 A. Generally correct. I think at some point in 22 the pretest we gave movie tickets, but 23 perhaps at that stage that's correct. 24 Q. On Page 2304, which is about a quarter of 25 the way in on yours, or a fifth of the way</p>	<p>1 Q. Now, you included former smokers in the time 2 survey which you had not included in the 3 conjoint survey. How come? 4 A. We understood that the question for timing 5 was to be asked among both such populations, 6 so we had them in the survey. 7 Q. Your conjoint analysis dealt with choices 8 among hypothetical products? 9 A. Yes. 10 Q. And people who had stopped smoking no longer 11 had an interest in choosing among 12 hypothetical products; is that correct -- 13 MR. LANDAU: Objection to form. 14 Q. -- presumably? 15 A. Well, I don't know that I could conclude 16 that. 17 Q. The conjoint analysis -- let me start this 18 again. 19 Assume that the class involved here 20 includes both former and current smokers. 21 A. Okay. 22 Q. The time study was intended to address that 23 class of former and current smokers; is that 24 correct? 25 MR. LANDAU: Objection to form.</p>

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<p>1 Q. What is the other possibility, that Dr. 2 Hauser -- 3 A. That Dr. Hauser wrote it, and I left the 4 conclusions blank for him to put in. 5 Q. Okay. One of the two of you wrote that? 6 A. Right. 7 Q. And regardless of who wrote it, up through 8 the date of this draft that language 9 survived; is that correct? 10 A. Yes. 11 Q. The next sentence says, "Appropriate 12 qualification questions, stimuli, and 13 methods were used to address the potential 14 difficulties respondents may have in 15 estimating the years in which events 16 occurred." 17 Did you draft that? 18 A. It would be the same answer as before. 19 Q. Okay. And when that was drafted and 20 preserved in this draft, that was your 21 belief at the time; is that correct? 22 A. Yes. 23 Q. And that was Dr. Hauser's belief at the 24 time; is that correct? 25 MR. LANDAU: Objection to form.</p>	<p>1 Q. As did Dr. Hauser -- 2 MR. LANDAU: Objection to form. 3 Q. -- from what he told you? 4 MR. LANDAU: Objection to form. 5 A. Well, let me clarify that. Around this time 6 we had shared this draft with counsel, and 7 they informed us of certain facts which 8 caused us to cast doubt upon the time 9 estimates, and I'm not sure if that's by 10 this day, and we just let it alone till we 11 could think of what to do or if we still 12 felt that way by this day, but around this 13 time when it was first created we believed 14 this. 15 Q. Okay. What facts did -- well, first of all, 16 which counsel informed you of such facts? 17 A. I don't recall. It was a conference call. 18 Q. Which counsel participated in the conference 19 call? 20 A. I know that Paul Gallagher participated. I 21 don't remember the other names -- 22 Q. Okay. 23 A. -- because I'm not very good with that. 24 Q. That's fine. What did Paul say to you -- 25 first of all, Paul had -- Paul Gallagher had</p>
Page 211	Page 213
<p>1 A. As far as I know. 2 Q. So far as he told you; is that correct? 3 A. Yeah. 4 Q. Next paragraph, "The results of the Time 5 Study can be relied upon as evidence with 6 which to draw inferences about the 7 distribution of when, if ever, current and 8 former 'light' smokers first changed their 9 beliefs regarding the health effects of 10 'light' versus regular cigarettes." 11 That was drafted either by you or Dr. 12 Hauser? 13 A. Yes. 14 Q. And it survived various drafts of this 15 report? 16 A. Yes. 17 Q. And that was your belief at the time it was 18 written? 19 MR. LANDAU: Objection to form. 20 A. I think at the time it was written, if I 21 were writing it, I would be writing it in 22 that format because that is customary, and 23 then Dr. Hauser would approve it, but at 24 that time I believed the survey was valid, 25 yes.</p>	<p>1 received the earlier drafts of the report 2 prior to the conference call; is that 3 correct? 4 MR. LANDAU: Objection to form. 5 A. That's not correct. 6 Q. Okay. When did he receive that? 7 A. He received -- he did not receive the draft 8 of this report until he came to visit us the 9 Friday of that week, which is whatever day, 10 the 17th, 16th, I don't know what day that 11 was, of December. 12 (Discussion off the record.) 13 THE WITNESS: If I may, while you 14 dig that up, I'll take another quick break. 15 MR. GROSSMAN: Okay. We'll turn 16 off the tape. 17 THE VIDEOGRAPHER: The time is 18 3:31. We're off the record. 19 (Recess taken.) 20 THE VIDEOGRAPHER: The time is 21 3:44. We are continuing. 22 BY MR. GROSSMAN: 23 Q. Okay. Could you turn with me to Paragraph 24 18 -- 25 A. Paragraph 18.</p>

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<p>1 Q. -- which is on Page 7 to 8.</p> <p>2 MR. LANDAU: On Exhibit 12?</p> <p>3 MR. GROSSMAN: Of Exhibit 12.</p> <p>4 Q. Do you see where it says, "The results of</p> <p>5 the Time Study can be relied upon as</p> <p>6 evidence with which to draw inferences about</p> <p>7 the distribution of when, if ever, current</p> <p>8 and former 'light' cigarette smokers first</p> <p>9 came to know or suspect that cigarette</p> <p>10 companies had not been telling the truth</p> <p>11 about the health effects of 'light' versus</p> <p>12 regular cigarettes"?</p> <p>13 A. Uh-huh.</p> <p>14 Q. That also reflected your belief and Dr.</p> <p>15 Hauser's belief as of the time when this</p> <p>16 draft was written; is that correct?</p> <p>17 MR. LANDAU: Objection to form.</p> <p>18 A. That's not quite correct.</p> <p>19 Q. Well, during the -- we just had a break of</p> <p>20 some --</p> <p>21 A. Yes.</p> <p>22 Q. -- few minutes?</p> <p>23 A. Yes.</p> <p>24 Q. You had an opportunity to talk with counsel;</p> <p>25 is that correct?</p>	<p>1 A. It did survive.</p> <p>2 Q. And it did survive Dr. Hauser's scrutiny</p> <p>3 from the earlier draft?</p> <p>4 MR. LANDAU: Objection to form.</p> <p>5 A. Yes, but I'm also saying something else, and</p> <p>6 it wasn't a mystery question. I'm saying</p> <p>7 that before the date of this draft we spoke</p> <p>8 with counsel, and they revealed certain</p> <p>9 facts to us about the way people -- what</p> <p>10 people should have been remembering and such</p> <p>11 that caused us to have doubts about this,</p> <p>12 and so this draft is surviving another day</p> <p>13 or so until we could figure out what to do</p> <p>14 about it. So that's why I'm quibbling.</p> <p>15 Q. Well --</p> <p>16 A. When it was first drafted, I was using the</p> <p>17 usual language for this, and I believed it</p> <p>18 at the time, and John believed it, till we</p> <p>19 heard otherwise.</p> <p>20 Q. Okay. The only source of your hearing</p> <p>21 otherwise was through counsel; is that</p> <p>22 correct?</p> <p>23 MR. LANDAU: Objection to form.</p> <p>24 A. They informed us based on documents they</p> <p>25 had, so --</p>
Page 215	Page 217
<p>1 A. Yes.</p> <p>2 Q. Did counsel discuss your testimony in this</p> <p>3 deposition during that break?</p> <p>4 A. Yes.</p> <p>5 Q. What did counsel tell you?</p> <p>6 A. They asked me if I remembered who drafted</p> <p>7 the document.</p> <p>8 Q. Who drafted the document?</p> <p>9 A. I said, again, I wasn't quite sure. It's</p> <p>10 likely I did, but I wasn't entirely sure.</p> <p>11 Q. You may have drafted it, or Dr. Hauser may</p> <p>12 have drafted it? Those are the only two</p> <p>13 possibilities; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And if you drafted it, Dr. Hauser approved</p> <p>16 it to that point; isn't that correct?</p> <p>17 MR. LANDAU: Objection to form.</p> <p>18 A. Again, there's certain timing difficulties</p> <p>19 with what you're saying, but -- so I can't</p> <p>20 answer yes for that.</p> <p>21 Q. You said earlier that this was not the first</p> <p>22 draft?</p> <p>23 A. That, I did.</p> <p>24 Q. And this language survived from an earlier</p> <p>25 draft?</p>	<p>1 Q. What documents --</p> <p>2 A. And facts.</p> <p>3 Q. What documents did they have?</p> <p>4 A. I'm not sure personally of the exact name of</p> <p>5 those documents.</p> <p>6 Q. Did you do any independent research on</p> <p>7 contemporaneous polls on smokers over</p> <p>8 preceding years as to their beliefs of the</p> <p>9 health effects of smoking?</p> <p>10 A. Could you repeat the question?</p> <p>11 Q. Have you done any research either before you</p> <p>12 were talking with counsel or after of polls,</p> <p>13 public polls, that were conducted on</p> <p>14 smokers' beliefs of the health risks of</p> <p>15 smoking over time?</p> <p>16 MR. LANDAU: Objection to form.</p> <p>17 A. None other than this study.</p> <p>18 Q. So your only information is the study that</p> <p>19 you conducted pursuant to scientific</p> <p>20 standards and what counsel told you about</p> <p>21 documents that you haven't seen; is that</p> <p>22 correct?</p> <p>23 MR. LANDAU: Objection to form.</p> <p>24 A. I haven't seen them. That doesn't mean that</p> <p>25 Dr. Hauser hasn't seen them.</p>

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<p>1 Q. Do you know whether he has or not?</p> <p>2 A. My belief is he has, yes.</p> <p>3 Q. Do you know what the documents are?</p> <p>4 A. I haven't seen them.</p> <p>5 Q. We looked on a calendar. November 16th, the</p> <p>6 date of this draft, was a Friday.</p> <p>7 A. Yes.</p> <p>8 Q. So this was the same date when you met with</p> <p>9 Mr. Gallagher and others; is that correct?</p> <p>10 A. We, John Hauser and I, met with Paul</p> <p>11 Gallagher.</p> <p>12 Q. And did you meet in person?</p> <p>13 A. Yes.</p> <p>14 Q. Where did you meet?</p> <p>15 A. At AMS's offices in Waltham.</p> <p>16 Q. Had he been provided with any of the drafts</p> <p>17 prior to the meeting?</p> <p>18 A. No.</p> <p>19 Q. Did he read a draft at the meeting?</p> <p>20 A. Yes.</p> <p>21 MR. LANDAU: Objection to form.</p> <p>22 Q. You said that you were test -- that you were</p> <p>23 speaking with counsel during the break?</p> <p>24 A. Yes.</p> <p>25 Q. Did counsel remind you of any -- attempt to</p>	<p>1 really familiar with the properties and</p> <p>2 their exact meaning.</p> <p>3 Q. Do you use Dr. Hauser's computer to do</p> <p>4 drafts of litigation report such as this?</p> <p>5 A. I don't type on it. I use my own computer.</p> <p>6 Q. So if this was originally created on Dr.</p> <p>7 Hauser's computer, it would be he rather</p> <p>8 than you who was the author of the --</p> <p>9 original author of the document; is that</p> <p>10 correct?</p> <p>11 MR. LANDAU: Objection to form.</p> <p>12 A. Well, you know, it could have had two lines</p> <p>13 at that point and then come to me.</p> <p>14 Q. Whatever, whatever it was?</p> <p>15 A. So it says "John Hauser" and last saved by</p> <p>16 me.</p> <p>17 Q. You said, "On December 16th Mr. Gallagher</p> <p>18 revealed facts about what people should be</p> <p>19 remembering."</p> <p>20 Do you know the nature of those facts?</p> <p>21 MR. LANDAU: Objection to form.</p> <p>22 A. I can tell you my understanding.</p> <p>23 Q. Okay.</p> <p>24 A. My understanding is that despite all of our</p> <p>25 efforts, we were measuring when people</p>
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<p>1 remind you of any facts related to your</p> <p>2 testimony during the break?</p> <p>3 A. Not that I know of.</p> <p>4 MR. LANDAU: Objection to form.</p> <p>5 Q. Did counsel suggest that any answer that you</p> <p>6 had given so far was incorrect or</p> <p>7 misleading?</p> <p>8 A. No.</p> <p>9 MR. LANDAU: Objection to form.</p> <p>10 Q. What did counsel say?</p> <p>11 A. They said when I discussed it with them</p> <p>12 before, that I had said that I had drafted</p> <p>13 the conclusions we were discussing, and here</p> <p>14 I said I wasn't quite sure.</p> <p>15 Q. And, in fact, you're not quite sure. Is</p> <p>16 that correct?</p> <p>17 A. Yes, I said it's probable, but I'm not quite</p> <p>18 sure, so they commented about it.</p> <p>19 Q. In fact the properties, which is document</p> <p>20 13 --</p> <p>21 A. Yeah.</p> <p>22 Q. -- indicates that the first draft was on Dr.</p> <p>23 Hauser's computer; is that correct?</p> <p>24 MR. LANDAU: Objection to form.</p> <p>25 A. It does say "John Hauser" there. I'm not</p>	<p>1 received the wrong sort of information, that</p> <p>2 they were supposed to be -- we were supposed</p> <p>3 to detect when their opinions were changed</p> <p>4 by either government announcements about the</p> <p>5 health risks of light cigarettes or -- and</p> <p>6 regarding when cigarette companies were</p> <p>7 misleading people. There were other</p> <p>8 documents that came out about this, so that</p> <p>9 they were referring to specific events, as</p> <p>10 far as I can see, not the personal events</p> <p>11 that I was detecting in pretest and probably</p> <p>12 in the survey.</p> <p>13 Q. Well, in fact, you made no effort to review</p> <p>14 newspaper -- historic newspapers, other</p> <p>15 historic documents, historic surveys by</p> <p>16 Gallup, the Gallup organization or others to</p> <p>17 determine contemporaneous public opinion on</p> <p>18 the health effects of smoking in the 1950s,</p> <p>19 '60s, '70s, '80s, or '90s; is that correct?</p> <p>20 MR. LANDAU: Objection to form.</p> <p>21 A. I did not review those reports.</p> <p>22 Q. You didn't review them before Mr. Gallagher</p> <p>23 said that there must be something wrong with</p> <p>24 the study, and you didn't review them after</p> <p>25 Mr. Gallagher said there must be something</p>

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<p>1 A. No. I just told you that it seemed to me to 2 be more of a legal question. He did not say 3 to me per se this is a legal question. It 4 was a question of what was the study trying 5 to measure and showing us that what we had 6 asked was incompatible with what the study 7 was actually trying to measure, which to us 8 was, you know, a compelling sort of 9 argument. It's not that -- 10 Q. Nothing -- 11 MR. LANDAU: Excuse me. 12 A. It's not that we got too low a number or 13 something. It's just an impossible number, 14 which is different from bad results where he 15 would want a better result. 16 MR. GROSSMAN: Move to -- 17 A. It was impossible results. 18 MR. GROSSMAN: Move to strike as 19 non-responsive. There was no pending 20 question as well. 21 A. Well, I was finishing my previous answer. 22 Q. Mr. Gaskin, you're saying that Mr. Gallagher 23 said that you were asking the wrong 24 questions? 25 MR. LANDAU: Objection to form.</p>	<p>1 when did that change in beliefs occur? That 2 was one question. And the other question 3 was -- and, again, I haven't seen it in a 4 while since it's been months, but we were 5 trying to measure if you believed that the 6 cigarette companies had misled you, I'm not 7 sure the exact verb, but something about 8 lied, misled, if they had misled you about 9 the health risks of light versus regular 10 cigarettes, when did you realize that that 11 was occurring? 12 Q. There was a third thing you were measuring 13 as well, wasn't there? Didn't you ask the 14 respondents whether they currently believed 15 that light cigarettes were more dangerous, 16 less dangerous or as dangerous as regular 17 cigarettes? 18 A. Well, what we were trying to do -- 19 Q. I need a -- 20 A. Okay. You want as short an answer as 21 possible? That was not measured in the same 22 sense that you referred to the two other 23 questions. 24 MR. GROSSMAN: (To Mr. Gleason.) 25 Let's get out the survey. Let's have the</p>
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<p>1 A. He didn't say it in exactly those words, 2 but -- 3 Q. That's what you inferred? 4 A. Yes. What we were measuring was not what we 5 were supposed to measure. 6 Q. What you did measure was accurately 7 measured, so far as you understood and still 8 believe; is that correct? 9 MR. LANDAU: Objection to form. 10 A. Well, let's put it this way: It was our 11 best shot at that. Measuring time events is 12 always difficult in market research when 13 people did something, because as you know, 14 people don't really remember things that 15 well. But it was our best effort to measure 16 those questions. 17 Q. Well, what did you believe you were 18 measuring? 19 A. Well, if we could look at the text of the 20 questions, I believed that -- well, I'll try 21 to answer that as far as I recall. There 22 were two questions: One was if you changed 23 your belief in the health risks of light 24 cigarettes and that belief changed from less 25 health risk to some -- to more health risk,</p>	<p>1 time -- the screen shots. 2 (Exhibit No. 14, Document headed 3 "Draft Exhibit J," Nos. E31 - E60, marked 4 for identification.) 5 Q. Mr. Gaskin, I'm handing you what's been 6 marked for identification purposes as Gaskin 7 Exhibit No. 14. 8 A. All right. And I just want to comment that 9 these were a lot clearer and in color when 10 we handed them in. 11 Q. Okay. 12 A. Because they're a little hard to read. 13 Q. I don't -- I don't mean to make this a 14 reading exam, but I would like to address 15 your attention to Page 39. 16 A. Yes. 17 Q. And you see on that question it asks 18 consumers, "Through your own experience, 19 including what you may have heard from 20 television, newspapers, the government, 21 friends, or other sources, you may have 22 formed beliefs about the health risks of 23 certain types of cigarettes. For example, 24 you might believe that smoking light 25 cigarettes has more health risks or less</p>

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<p>1 health risks than smoking regular 2 cigarettes"?</p> <p>3 A. Yes, it says that.</p> <p>4 Q. "We want you to use your," all capitals, 5 "personal belief," highlighted, "as you 6 answer the following question: Do you 7 personally believe that smoking light 8 cigarettes has more health risks than 9 smoking regular cigarettes, the same health 10 risks as smoking regular cigarettes, less 11 health risks than smoking regular 12 cigarettes," or "I don't know and not sure"?</p> <p>13 A. That's what it says.</p> <p>14 Q. Yes. Now, that question was administered, 15 and it was answered, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And nothing that Mr. Gallagher said about 18 historic events affects the validity of the 19 answers to that question; is that correct?</p> <p>20 MR. LANDAU: Objection to form.</p> <p>21 A. That's correct, but, again, I would like to 22 explain that this is a foundational question 23 where we're trying to find people with a 24 large change between their previous and 25 posterior belief, so it's not intended to be</p>	<p>1 Q. And, in fact, it was your understanding, 2 based upon all your meetings with counsel 3 before December 14th, 15th or 16th, whenever 4 you spoke with Mr. Gallagher and he said 5 that there was a problem, it was always your 6 understanding that you were probing the 7 beliefs of light smokers based upon what 8 they had heard from a wide variety of 9 sources, not just what they had heard from 10 government reports; is that correct?</p> <p>11 MR. LANDAU: Objection to form.</p> <p>12 A. Well, to be honest, Mr. Gallagher was not 13 really very available during this time. It 14 is possible he looked at it. I don't know 15 for sure because he was often traveling out 16 of the country and unreachable, and we were 17 on a very tight schedule.</p> <p>18 Q. Well, whether he looked at it or not, it was 19 available to him and all of plaintiffs' 20 counsel in the period before it was 21 administered; is that correct?</p> <p>22 MR. LANDAU: Objection to form.</p> <p>23 A. Yes, it was available.</p> <p>24 Q. And it was your understanding -- regardless 25 of where Mr. Gallagher was anywhere in the</p>
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<p>1 a measure -- as an exact a measure as the 2 conjoint analysis of whether people deeply 3 believe that the cigarettes are more or less 4 risky.</p> <p>5 MR. GROSSMAN: All right. Move to 6 strike the latter part as non-responsive.</p> <p>7 Q. Was this question available to Mr. Gallagher 8 and plaintiffs' counsel before it was 9 administered in the survey?</p> <p>10 MR. LANDAU: Objection to form.</p> <p>11 A. Yes.</p> <p>12 Q. And do you see that the question which has 13 been available to counsel before December 14 14th, 15th or 16th, in fact, before November 15 30th said, "Through your own experience, 16 including what you have heard from 17 television, newspapers, the government, 18 friends, or other sources," counsel had 19 approved a question that related to sources 20 of information on the health risks of light 21 cigarettes that extended well beyond 22 government reports; is that correct?</p> <p>23 MR. LANDAU: Objection to form.</p> <p>24 A. This question does base people's opinions on 25 more than just government reports.</p>	<p>1 world, it was your personal understanding, 2 based upon all of your conversations with 3 counsel and your reading of Judge 4 Weinstein's opinion and any other 5 information that you had at your disposal, 6 that you were testing light smokers' beliefs 7 and awareness on the basis of what they had 8 heard from all sources, not just from the 9 government; is that correct?</p> <p>10 MR. LANDAU: Objection to form.</p> <p>11 A. It was my belief that the information could 12 come from any source.</p> <p>13 Q. Okay. Now, Mr. Gallagher told you that he 14 did not want a survey -- let me go back.</p> <p>15 On December 14, 15th or 16th when you 16 spoke with Mr. Gallagher after the first 17 draft or so of the report on the time 18 survey --</p> <p>19 A. Right.</p> <p>20 Q. -- Mr. Gallagher said he was not interested 21 in when people changed their minds generally 22 but only when they changed their mind as a 23 result of government reports; is that 24 correct?</p> <p>25 MR. LANDAU: Objection to form.</p>

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<p>1 A. This is my understanding of it, and I can't 2 recall exactly what he said, but that's the 3 sense that I got from him. 4 Q. That's -- and accurately reports on the 5 sense that you got? 6 MR. LANDAU: Objection to form. 7 A. Yes, that their knowledge was based -- 8 should be based on certain events which 9 occurred at a certain time. 10 Q. Now, did Mr. Gallagher ever tell you that in 11 1983 one of the experts in this case named 12 Dr. Benowitz published a report that was 13 widely reported in newspapers throughout the 14 country in which he said that he found that 15 smokers of light cigarettes had the same 16 risks as smokers of full-flavored 17 cigarettes? 18 MR. LANDAU: Objection to form. 19 A. Full-flavored cigarettes? 20 Q. What you referred to as regular cigarettes? 21 A. I've not heard of that report. 22 Q. Okay. Mr. Gallagher didn't tell you about 23 it; is that correct? 24 A. Not that I recall. 25 Q. Mr. Gallagher didn't tell you about polls of</p>	<p>1 Exhibit No. 14 -- 15, which is a draft 2 report that we believe is dated December 3 19th. 4 (Discussion off the record.) 5 (Exhibit No. 15, Draft Expert 6 Witness Report by Dr. John R. Hauser, marked 7 for identification.) 8 MR. GROSSMAN: Let's turn off the 9 tape. 10 THE VIDEOGRAPHER: The time is 11 4:23. We are off the record. 12 (Recess taken.) 13 THE VIDEOGRAPHER: The time is 14 4:23. We are back on the record. 15 BY MR. GROSSMAN: 16 Q. Mr. Gaskin, I've handed you what's been 17 marked for identification purposes as 18 Exhibit No. 15, which is a copy of a draft 19 report which we believe is dated December 20 19th. I would like to turn your attention, 21 if I may, to Page 31. 22 A. Just a moment. Can you tell me why this is 23 December 19th? 24 Q. From the properties that were -- 25 A. Can I see them?</p>
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<p>1 light smokers conducted in the 1980s or 2 1990s that showed that a majority of light 3 smokers at that time believed that light 4 cigarettes were as dangerous as regular 5 cigarettes, did he? 6 MR. LANDAU: Objection to form. 7 A. Well, I don't know of -- I haven't heard of 8 such polls. 9 Q. Okay. And it follows from that that Mr. 10 Gallagher didn't tell you about that; is 11 that correct? 12 MR. LANDAU: Objection to form. 13 A. I think it follows that I don't recall him 14 telling me about that. 15 Q. Okay. Now, when the draft in front of you 16 was written and the earlier drafts were 17 written, it was your understanding that this 18 report would be submitted to the Court as a 19 final report with no further studies to be 20 undertaken; is that correct? 21 MR. LANDAU: Objection to form. 22 A. I wasn't aware of any further studies that 23 would take place. 24 Q. Okay. Now, let me hand you what I'll have 25 marked for identification purposes as Gaskin</p>	<p>1 Q. Yeah, sure. Let me get them out. 2 A. And what was the name of this file? 3 Q. Now you've got me there. 4 A. Because that's how I'll recognize it. 5 Q. I hand you what I'll mark as Exhibit No. 16, 6 which is a printout of the properties that 7 we found related to that document. 8 (Exhibit No. 16, Document headed 9 "Hauser's December 19 Draft Time Exhibits - 10 Properties," marked for identification.) 11 A. Yeah, let's take a look. 12 (Witness reviews document.) 13 MR. LANDAU: Do you have a copy of 14 that? 15 MR. GROSSMAN: I don't have one 16 more copy. You can look on with him. 17 A. This is for exhibits. This isn't for the 18 report. 19 Q. Okay. Then it's the wrong one. 20 MR. BUTTERFIELD: Just put it down 21 there. 22 THE WITNESS: Okay. 23 MR. GROSSMAN: Okay. We have to go 24 off again because he has to change the tape. 25 Let's go off the record.</p>

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<p>1 A. Okay. So not the 19th?</p> <p>2 Q. No, the 18th apparently; is that correct?</p> <p>3 A. That looks like one of my files.</p> <p>4 Q. Based upon your review of the files, a draft</p> <p>5 was made on December 18th?</p> <p>6 A. It was saved on December 18th.</p> <p>7 Q. December 18th, okay.</p> <p>8 Let's look at Exhibit 15, which we now</p> <p>9 believe is the draft that was saved on</p> <p>10 December 18th; is that correct?</p> <p>11 MR. LANDAU: Objection to form.</p> <p>12 A. Well, that's what it says. I just want you</p> <p>13 to know that I was no longer in Boston on</p> <p>14 the 18th.</p> <p>15 Q. Where were you?</p> <p>16 A. I was in Belize in Central America, so I was</p> <p>17 not reachable at that point.</p> <p>18 Q. So you were not involved -- let me rephrase</p> <p>19 the question.</p> <p>20 We previously reviewed a draft of</p> <p>21 December 16th which you said was not the</p> <p>22 first draft of the report but which was</p> <p>23 later revised again; is that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Were you involved in any revisions of that</p>	<p>1 A. It was saved.</p> <p>2 Q. When did you leave for Belize?</p> <p>3 A. Early in the morning on the Saturday of the</p> <p>4 17th.</p> <p>5 Q. Okay. And if this document was created in</p> <p>6 its -- revised on December 17th and saved on</p> <p>7 December 18th, it makes sense that you would</p> <p>8 not have seen it; is that correct?</p> <p>9 A. That would make sense.</p> <p>10 Q. You never -- in all the time that you worked</p> <p>11 on the time survey, you never referred to it</p> <p>12 as the experimental time study draft; is</p> <p>13 that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Nor did Dr. Hauser refer to it that way to</p> <p>16 you in all the time that you referred -- you</p> <p>17 worked on it; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Were you involved in preparation of the</p> <p>20 draft that was signed and served on</p> <p>21 defendants December 19th that contained</p> <p>22 Footnote 2 that you referred to earlier?</p> <p>23 A. No.</p> <p>24 MR. LANDAU: Objection to form.</p> <p>25 Q. Did you know that such a revision was taking</p>
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<p>1 draft after that draft was written?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Could you look at Exhibit No. 15 --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- Page 31.</p> <p>6 A. Page 31. All right.</p> <p>7 Q. Do you see it says at the top "Overview of</p> <p>8 Methodology - Experimental Time Study</p> <p>9 (Draft)"?</p> <p>10 A. Yes.</p> <p>11 Q. Were you involved in drafting a revised</p> <p>12 draft that referred to the time study as an</p> <p>13 experimental time study draft?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Okay. So someone else revised this draft to</p> <p>16 include that language?</p> <p>17 A. To include the word "experimental."</p> <p>18 Q. And "draft"; is that correct?</p> <p>19 MR. LANDAU: Objection.</p> <p>20 A. Yes.</p> <p>21 Q. And this draft was in all likelihood</p> <p>22 prepared after you had left for Belize --</p> <p>23 MR. LANDAU: Objection.</p> <p>24 Q. -- or were otherwise unreachable?</p> <p>25 MR. LANDAU: Objection to form.</p>	<p>1 place when it did?</p> <p>2 A. No. I was unreachable, or at least not</p> <p>3 easily reachable.</p> <p>4 (Pause.)</p> <p>5 Q. Could you turn with me to Paragraph 96,</p> <p>6 which reads as follows: "I am informed that</p> <p>7 the public health community did not reach a</p> <p>8 consensus that 'light' cigarettes had the</p> <p>9 same health risk as regular cigarettes until</p> <p>10 approximately 2001. If this is the case and</p> <p>11 if respondents did not have a means to form</p> <p>12 these beliefs prior to 2001, then it appears</p> <p>13 that respondents are either telescoping</p> <p>14 their responses to earlier dates,</p> <p>15 remembering other events, or some other</p> <p>16 reporting error. Furthermore, these effects</p> <p>17 appear to be greater for less confident</p> <p>18 respondents."</p> <p>19 A. All right.</p> <p>20 Q. Does that refer to the material and</p> <p>21 statements that Mr. Gallagher was making?</p> <p>22 MR. LANDAU: Objection to form.</p> <p>23 A. I believe so.</p> <p>24 Q. Now, with regard to the phrase "if</p> <p>25 respondents did not have a means to form</p>

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<p>1 these beliefs prior to 2001," do you recall</p> <p>2 whether Mr. Gallagher said that light</p> <p>3 smokers did not have a means to form their</p> <p>4 beliefs before 2001 as to the health risks</p> <p>5 of lights versus regular cigarettes?</p> <p>6 MR. LANDAU: Objection.</p> <p>7 A. Again, I don't recall exactly what he said.</p> <p>8 So you can try again, I'm sorry.</p> <p>9 Q. Based upon your best recollection, did Mr.</p> <p>10 Gallagher suggest or state that prior to</p> <p>11 2001 light smokers did not have a means to</p> <p>12 form a belief that light cigarettes were as</p> <p>13 dangerous as regular cigarettes?</p> <p>14 MR. LANDAU: Objection to form.</p> <p>15 A. I don't believe so.</p> <p>16 Q. Did Mr. Gallagher ever tell you that he and</p> <p>17 his law firm filed cases with essentially</p> <p>18 similar -- essentially identical allegations</p> <p>19 as early as 1998?</p> <p>20 MR. LANDAU: Objection to form.</p> <p>21 A. I haven't heard that. I don't know when</p> <p>22 these things are filed or when this one was</p> <p>23 filed.</p> <p>24 Q. Okay. But for Mr. Gallagher's intervention</p> <p>25 the report that was done in draft form on</p>	<p>1 Q. Okay. Now that we have that caveat in</p> <p>2 place, but for the information that was</p> <p>3 presented to you by plaintiffs' counsel --</p> <p>4 A. Yes.</p> <p>5 Q. -- the December 16th draft report on the</p> <p>6 time study and on the degree of confidence</p> <p>7 that the Court could place on the time study</p> <p>8 would have been filed with the Court on or</p> <p>9 before December 19th --</p> <p>10 MR. LANDAU: Objection --</p> <p>11 Q. -- in substantially the same form?</p> <p>12 MR. LANDAU: Objection to form.</p> <p>13 A. That's my belief.</p> <p>14 Q. Okay. Now, when you were conducting the</p> <p>15 conjoint survey and you asked respondents to</p> <p>16 compare the risks of light cigarettes and</p> <p>17 regular cigarettes, were you asking them to</p> <p>18 compare the risks on a per cigarette basis</p> <p>19 or on a total basis depending upon the</p> <p>20 number of cigarettes smoked?</p> <p>21 MR. LANDAU: Objection to form.</p> <p>22 A. That's an either/or question, and the answer</p> <p>23 would be neither.</p> <p>24 Q. What were you asking them to compare?</p> <p>25 A. We were asking them a more general question,</p>
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<p>1 December 16th would have been filed with</p> <p>2 Judge Weinstein reporting on the time</p> <p>3 survey; is that correct?</p> <p>4 MR. LANDAU: Objection to form.</p> <p>5 A. Not so much as intervention as the</p> <p>6 information he presented.</p> <p>7 Q. Okay. Just for clarity of the question and</p> <p>8 answer --</p> <p>9 A. Yes.</p> <p>10 Q. -- but for Mr. Gallagher's providing</p> <p>11 information in mid-December 2005 the report</p> <p>12 that is in draft form on December 16th, 2005</p> <p>13 reporting on the time survey and the degree</p> <p>14 of confidence that the Court could place on</p> <p>15 it would have been filed with the Court on</p> <p>16 or before December 19th; is that correct?</p> <p>17 MR. LANDAU: Objection to form.</p> <p>18 A. I would have a slight caveat to that.</p> <p>19 Q. Your answer is yes with a caveat?</p> <p>20 MR. LANDAU: Objection to form.</p> <p>21 A. No, my answer is I have a caveat.</p> <p>22 Q. What is the caveat?</p> <p>23 A. Mr. Gallagher is the one counsel I can</p> <p>24 remember, but we were presented this by a</p> <p>25 group of counsel.</p>	<p>1 the health risk you perceive light</p> <p>2 cigarettes, the health risk you perceive</p> <p>3 regular cigarettes to have. It was not --</p> <p>4 we could look at the screens, but I don't</p> <p>5 believe it was in quite that detail.</p> <p>6 Q. Okay. I don't believe it was in that</p> <p>7 detail, either --</p> <p>8 A. Okay.</p> <p>9 Q. -- and so I'm trying to see if there's a</p> <p>10 latent ambiguity.</p> <p>11 A. All right.</p> <p>12 MR. LANDAU: Objection to form.</p> <p>13 Q. Both in the time study and in the conjoint</p> <p>14 study, in pretests and in previous</p> <p>15 interviews did you ever seek to clarify</p> <p>16 whether consumers were evaluating light</p> <p>17 cigarettes versus regular cigarettes on a</p> <p>18 per cigarette basis or on a total basis?</p> <p>19 MR. LANDAU: Objection to form.</p> <p>20 A. No, I did not.</p> <p>21 Q. Okay. So you don't know if in responding to</p> <p>22 the surveys consumers were responding on</p> <p>23 a -- to the comparative risks on a per</p> <p>24 cigarette basis or on a total basis?</p> <p>25 MR. LANDAU: Objection to form.</p>

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<p>1 One was don't know, one was less than the 2 health risks of a regular, the other one was 3 the same, the other one was more, correct? 4 A. Those were the scales, yes. 5 Q. And -- 6 A. Well, more or less, yes. 7 Q. Yes. And 76.9 percent of the respondents 8 said that they believed that light 9 cigarettes had the same health risk as 10 regular cigarettes; is that correct? 11 A. That's how they answered that, yes. 12 Q. In fact, among those who had an answer, 13 81.9, almost 82 percent, believed that the 14 risks of lights were the same as the risks 15 of regulars? 16 A. I would not -- 17 MR. LANDAU: Objection to form. 18 A. -- characterize this, correct. 19 Q. I'll rephrase the question because I think I 20 know what your -- 21 A. Okay. 22 Q. -- problem is. In response to the question 23 that you asked, 81.9, almost 82 percent, of 24 respondents said that they believed that the 25 health risks of light cigarettes were the</p>	<p>1 A. That's how they answered that question. 2 Q. And only 16 percent of respondents -- 3 A. Wait. I'm sorry, I've lost the other page. 4 Can you tell me where that is? 5 Q. Yes. That's Page 6 -- Hauser 696 which is 6 all the way toward the back. It's 2390. 7 A. Of Exhibit? 8 Q. Of Exhibit 11. 9 A. Okay. Which page? I'm -- oh, wait. I'm 10 there. Okay. I was lucky. 11 Q. Okay. And 16.0 percent of those who had an 12 answer, who have an opinion, believed that 13 light cigarettes had less health risks than 14 smoking regular cigarettes? 15 A. That's their stated belief. 16 Q. That's their stated belief; is that correct? 17 A. That's what they said, yes. 18 Q. Yes. Now, there were a number of 19 differences between the question that was 20 asked in the time survey on this issue and 21 the question that was asked in the conjoint 22 survey on this issue; is that correct? 23 A. That's correct. 24 Q. Let's get out the question -- let's get out 25 the conjoint analysis screen shots.</p>
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<p>1 same as the health risks of regular 2 cigarettes; is that correct? 3 MR. LANDAU: Objection to form. 4 A. I don't recall if the verb was "believe" or 5 "perceive." 6 Q. Let's go back to the -- 7 A. Yeah. 8 Q. -- screen shot. 9 A. They did answer at that scale value of the 10 question. 11 Q. Look at Exhibit 14 with me again. You have 12 a copy there in front of you. 13 A. Oh, yeah. It's here somewhere. 14 Q. Looking at the time survey -- 15 A. Yes, okay. I see it. 16 Q. -- 80 -- almost 82 percent of all 17 respondents who had an opinion said that 18 they believed that smoking light cigarettes 19 had the same health risks as smoking regular 20 cigarettes; is that correct? 21 A. That's how they answered that question. 22 Q. And 2 percent said they believed that the 23 health risks of light cigarettes were 24 greater than the health risks of regular 25 cigarettes; is that correct?</p>	<p>1 MR. GROSSMAN: In fact, this is, 2 for me, a good time for a bathroom break. 3 Why don't we turn off the -- let's take a 4 break. 5 THE VIDEOGRAPHER: I'm sorry? 6 MR. GROSSMAN: Break time. 7 THE VIDEOGRAPHER: A break, I'm 8 sorry. The time is 4:56. We're off the 9 record. 10 (Recess taken.) 11 THE VIDEOGRAPHER: The time is 12 5:16. We are back on the record. 13 (Exhibit No. 20, Document headed 14 "Exhibit D, Questionnaire, Web Survey Screen 15 Shots," Nos. E4 - E24, marked for 16 identification.) 17 BY MR. GROSSMAN: 18 Q. Mr. Gaskin, I've handed you what's been 19 marked for identification purposes as 20 Exhibit No. 20. That's a copy of the screen 21 shots from the conjoint -- 22 THE VIDEOGRAPHER: Counselor, I 23 don't think you're wearing your... 24 MR. GROSSMAN: Let's -- 25 Q. Okay. It's a copy of the screen shots from</p>

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